

United States
Circuit Court of Appeals
For the Ninth Circuit.

JUNEAU FERRY AND NAVIGATION COM-
PANY, a Corporation,

Appellant,

VS.

C. P. MORGAN, R. B. COCHRAN AND H. JO-
HANSEN, Copartners, Doing Business
Under the Name and Style of the ISLAND
FERRY COMPANY,

Appellees.

Transcript of Record.

Appeal from
Upon ~~Writ of Error to~~ the United States District Court of the
District of Alaska, Division No. 1.

Filed

MAR 3 - 1916

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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[Names and Addresses of Attorneys.]

J. H. COBB, Juneau, Alaska,

Attorney for Plaintiff in Error.

GEORGE IRVING, Juneau, Alaska,

Attorney for Defendant in Error.

*In the District Court for the District of Alaska,
Division No. One.*

No. 1392-A.

C. P. MORGAN and R. B. COCHRAN and H.
JOHANSEN, Copartners, Doing Business
Under the Name and Style of the ISLAND
FERRY COMPANY,

Plaintiffs.

vs.

JUNEAU FERRY AND NAVIGATION COM-
PANY, a Corporation,

Defendant.

Complaint.

Plaintiffs above named, for cause of action against
the above-named defendant, complain and allege as
follows:

I.

That plaintiffs are copartners engaged in the ferry
business and in the transportation of freight and
passengers between the towns of Juneau, Alaska,
and Douglas, Alaska; and have been so engaged in
the business aforesaid continuously from the 3d day
of August, 1915, and are still so engaged.

II.

That defendant is a corporation organized under the laws of Alaska and engaged in the general ferry business between the towns of Juneau, Alaska and Douglas, Alaska.

III.

That on the date of November 1, 1915, the common council of the town of Douglas, did make and execute a good and sufficient lease, a copy of which is hereto attached and marked exhibit "A" and made a part of this complaint, to the said plaintiffs, wherein the said town of [1a*] Douglas did grant and lease to the said plaintiffs, a certain float and premises for a certain rental and for a period of time and upon the payment of a certain sum, all of which is in said lease more particularly set forth in the copy hereto attached and made a part of this complaint.

IV.

That said plaintiffs, under and by virtue of said lease did take and have quiet, undisturbed and peaceful possession of the said leased property from the 6th day of November, 1915, up to the 13th day of November, 1915.

V.

That on the 13th day of November, 1915, the said Juneau Ferry and Navigation Company, wholly disregarding the rights of said plaintiffs, under and by virtue of said lease hereinbefore mentioned, and after good and sufficient notice from said plaintiffs, both oral and written, and after good and sufficient

*Page-number appearing at foot of page of original certified Record.

notice in writing served upon defendants by the town of Douglas through its legally authorized officers and agents, a copy of which notice is hereto attached and made a part of this complaint and marked exhibit "B," did wrongfully, wilfully and maliciously, and in total disregard of plaintiff's rights therein, enter in and upon said float and premises, by landing their ferry thereat for the purposes of discharging freight and passengers and for the further purpose of loading freight and passengers to the exclusion of plaintiffs and to their damage as hereinafter alleged.

VI.

That the said defendant has owned and operated and does now own and operate a ferry or ferries between the towns of Juneau and Douglas, Alaska, for a number of years last past; that they own and control a [2] good and sufficient float and landing at the town of Douglas, Alaska; that said defendant has at all times exclusively used the said float and landing, controlled and owned by it for ferry purposes; that said float and landing is better located and is of superior construction to the float and landing owned, used and controlled by the plaintiffs.

VII.

That said landing at, and the trespass in and upon the said float and premises owned and controlled by plaintiffs, by the said defendant, in total disregard of the rights of said plaintiffs, and after due and legal notice as herein set forth to the said defendant, was for the sole purpose of depriving plaintiffs of their rights, and injuring plaintiffs in that on ac-

count of said acts of trespass committed by defendant as herein set forth plaintiffs have been damaged in an amount which is approximately \$15 per day; and that unless defendant is enjoined from continuing said trespass in and upon said float and premises, owned and controlled by plaintiffs, the plaintiffs will be further damaged in a sum upwards of \$35 per day and will be obliged to discontinue their said ferry business; that plaintiffs have no plain, speedy nor adequate remedy at law.

WHEREFORE, plaintiffs pray that the defendant be enjoined from landing at, occupying or trespassing upon said float and premises or in any manner interfering with plaintiffs' exclusive possession of said float and premises, and for such further relief as to the Court shall seem just and equitable in the premises, and that a temporary restraining order be issued herein enjoining and restraining defendants from continuing the acts and things complained of, until further order of the Court.

IRVING and MILLWEE,
Attorneys for Plaintiffs. [3]

United States of America,
Territory of Alaska,—ss.

C. P. Morgan, being first duly sworn, deposes and says: That he is one of the plaintiffs named in the foregoing complaint; that he has read said complaint and knows the contents thereof and that all the facts alleged therein are within his personal knowledge; that the said facts are true.

C. P. MORGAN.

Subscribed and sworn to before me this 15th day of November, 1915.

[Notarial Seal]

GEORGE IRVING,
Notary Public for Alaska.

My Commission expires May 14, 1916. [4]

[Exhibit "A" to Complaint—Lease.]

THIS INDENTURE made this 13th day of November, 1915, between the town of Douglas, Alaska, a municipal corporation, hereinafter designated the party of the first part, and C. P. Morgan and R. B. Cochran, a copartnership doing business under the name of the Island Ferry Company, hereinafter designated as parties of the second part.

WITNESSETH, That the said parties of the first part, for and in consideration of the rents, covenants and agreements hereinafter mentioned, to be kept, paid and performed by the said parties of the second part, their executors, administrators and assigns, has demised and leased to the said second parties, the following described premises situated in the town of Douglas, Alaska, and owned and controlled by the said first party, to wit:

“That certain Float and Landing adjoining the City Dock on the north side of the same, together with all piling and structures incident and appurtenant to the same and necessary for the maintenance of said Float; and also the gangway and necessary approaches to said Float with the right of ingress and egress to and from said Float by land and water.”

TO HAVE AND TO HOLD, the above-described premises with the appurtenances, unto the said sec-

ond parties, their executors, administrators and assigns from the first day of November, 1915, for and during the full term of one year from said date.

And the said second parties, in consideration of the leasing of the premises aforesaid by the said first party to the said second parties, do covenant and agree, with the said first party, to pay to the said first party as annual rent for said demised premises the sum of Three Hundred (\$300) Dollars, payable in monthly installments of Twenty-five (\$25) Dollars on the first of each and every month during the full term of this lease contract.

And the said second parties further covenant with the said first party that they will keep said demised premises in a clean, and wholesome condition, in accordance with the ordinances of the said town of Douglas, and that, at the expiration of the time in this lease mentioned they will yield up the said premises to the said first party in as good condition as when entered upon, loss by fire, inevitable accident and ordinary *ware* thereof and damage by the elements alone excepted.

It is further agreed by the said second parties that they will not sublet nor under-let said premises nor any portion thereof nor sell, transfer nor assign this lease without first having obtained the written consent of the said first party.

It is expressly agreed and understood by and between the parties aforesaid, that if the rent above reserved, or any part thereof shall be unpaid, on the day of payment wherein it ought to be paid as aforesaid, or if default be made in any of the covenants

herein contained to be kept by the said second party, their heirs, administrators or assigns, it shall and may be lawful for the said first party, at its election to declare said term ended and re-enter the said premises and expell all persons therefrom, using such force as may be necessary in so doing. [5]

It is further understood and agreed that all the conditions and covenants contained in this lease shall be binding upon the executors, administrators and assigns of the parties to these presents respectively.

IN WITNESS WHEREOF, the said parties hereto have hereunto set their hands this 13 day of November, 1915.

CITY OF DOUGLAS,

A Municipal Corporation.

By PETER JOHNSON,

President of Common Council and Ex-officio Mayor,
First Party.

C. P. MORGAN,

R. B. COCHRAN,

Second Parties.

Witnesses:

JOE ROBERTSON,

FRANK OLIVER.

United States of America,
Territory of Alaska,—ss.

THIS CERTIFIES, that on this 13th day of November, 1915, before me the undersigned, a notary public in and for the Territory of Alaska, duly commissioned and sworn, personally appeared Peter Johnson, to me known to be the president of the

8 *Juneau Ferry and Navigation Company*

Common Council of the town of Douglas, and ex-officio Mayor of the same, and also to me personally known to be the individual who signed the foregoing instrument on behalf of the town of Douglas, as the party of the first part thereof, and acknowledged to me that he signed the same on behalf of the said first party; and that he was authorized so to do by the Common Council of the said town of Douglas at a regular meeting held on the first day of November, 1915; and also appeared personally C. P. Morgan and R. B. Cochran to me known to be the individuals described in and who signed the foregoing instrument as the parties of the second part thereof, and acknowledged to me that they signed the same as their own free and voluntary act and deed for the uses and purposes herein mentioned.

IN WITNESS WHEREOF, I have hereto set my hand and official seal the day and year in this certificate first above written.

[Seal]

R. R. HUBBARD,
Notary Public for Alaska.

My Commission expires March 21, 1916.

True copy of the original Exhibit "A." [6]

[Exhibit "B" to Complaint—Notice, etc.]

COPY.

Douglas, Alaska, Nov. 5th, 1915.

To the Juneau Ferry & Navigation Company, and to
all Persons Operating Boats to and from the
North Float at the City Dock, Douglas.

You are hereby notified that at the Council meeting held in Douglas on November 1st., the north float

of the City Dock was leased to the Island Ferry Co. for a period of one year and is their exclusive property for that period. Any person operating boats to and from said float or in any manner trespassing on same without permission from the Island Ferry Company will be prosecuted.

W. A. SHAFER,
City Marshal.

Copy of the above served on F. Panter at 11:35 A. M., Nov. 5th, 1915.

W. A. SHAFER,
City Marshal.

Exhibit "B."

COPY.

Douglas, Alaska, Nov. 13th, 1915.

Mr. E. J. Margrie, Manager,
Juneau Ferry & Navigation Company,
Juneau, Alaska.

Dear Sir:

This is to acknowledge receipt of your letter of the 12th inst. In reply you are advised that the City Council on Nov. 1st., leased the North float of the City dock to the Island Ferry Company for a term of one year commencing on November 1st., 1915, at a rental of \$25 per month. This float has been delivered over to the Island Ferry Company and to their exclusive use.

The south float is still available to the public. The City Council has acted wholly within its rights and has not deprived the public of the use of a public float.

It is not the purpose of the Council to maintain

two floats and we feel under no obligations to your Company to maintain a free additional float on the north side of the City dock. The lease has [7] been given and the Island Ferry Company is now in possession of the NORTH FLOAT. Any further negotiations you have should be conducted with them.

[Seal]

PETER JOHNSON,
Mayor.
R. R. HUBBARD,
City Clerk.

Exhibit "B."

COPY.

Douglas, Alaska, Nov. 11th, 1915.

Juneau Ferry & Navigation Co.,

Juneau, Alaska.

Gentlemen:

I herewith acknowledge receipt of your letter dated Nov. 10th, addressed to the writer, also of letter dated Nov. 5th, 1915, addressed to Mr. W. A. Shafer, City Marshal. In answer I will state that the records of the Council Meeting held Nov. 1st., show that a motion was made and seconded that the North Float of the Douglas City Wharf be leased to the Island Ferry Co. for one year at a rental of \$25 per month, payable in advance. Motion carried. I am informed by the City Attorney that Mr. Morgan of the Island Ferry Co. informed him that Mr. Margrie of the Juneau F. & N. Co. refused to cease landing his boats at the float which the City leased to Mr. Morgans Co. until he was notified by the City authorities of Douglas that the float had been leased.

(the communication continues) "Will you kindly have Mr. Shafer give a written notice to whoever is in command of the 'Teddy' on her next trip she makes to this float. I enclose herewith a notice which I think will answer the purpose." I am unable to make any further statement as the Council have had no meeting since my return from Seattle on the 20nd. inst. All communication on file in this office will be presented to the Council at their next meeting.

Yours truly,

[Seal]

R. R. HUBBARD,
City Clerk.

Exhibit "B."

[Endorsed]: Filed in the District Court, District of Alaska, First Division. Nov. 15, 1915. J. W. Bell, Clerk. By C. Z. Denny, Deputy. Original. In the District Court for the District of Alaska, Division No. 1. C. P. Morgan et al., Copartners Doing Business Under the Name of the Island Ferry Co. vs. Juneau Ferry and Navigation Company, a Corporation. Number ——. Complaint. George Irving and S. H. Millwee, Attys. for Pltffs. [8]

*In the District Court for the District of Alaska,
Division No. One, at Juneau.*

No. 1392-A.

C. P. MORGAN, R. B. COCHRAN and H. JOHAN-
SEN, Copartners, Doing Business Under the
Name and Style of the ISLAND FERRY
COMPANY,

Plaintiffs,

vs.

JUNEAU FERRY AND NAVIGATION COM-
PANY, a Corporation,

Defendant.

**Order to Show Cause and Temporary Restraining
Order.**

The plaintiffs in the above-entitled cause, having commenced an action in the District Court for the First Judicial Division, Territory of Alaska, against the above-named defendant, and having prayed for an injunction against said defendant requiring it to refrain from certain acts in said complaint and hereinafter more particularly mentioned.

Now, on reading said complaint in said action (duly verified by oath of said plaintiff, C. P. Morgan) it is ordered, that on the 22d day of November, 1915, and the hour of 10 o'clock A. M., at the courthouse at Juneau, said Juneau *and* Ferry and Navigation Company, defendant herein show cause, if any it has, why an injunction *pendente lite* should *not issued* as prayed for in the complaint; and in the meantime, and until further order of the Court,

you, the said Juneau Ferry and Navigation Company and all your agents, servants and employees and all others acting in aid or assistance of you are enjoined and restrained from using, landing at, or entering in or upon or otherwise trespassing in or upon that certain float and premises situate on the north side of the city dock at the town of Douglas, Alaska, as is more particularly described in plaintiffs' complaint; or in any other manner interfering with plaintiffs' exclusive use and possession thereof. The order to be in force from and after the filing of a bond of indemnity in the sum of \$500 to be approved by this Court.

ROBERT W. JENNINGS,
Judge.

Entered Court Journal No. L, pages 181-82. [9]
United States of America,
Territory of Alaska,
Division Number One,—ss.

I, H. A. Bishop, United States Marshal for the First Division of Alaska, do hereby certify and return that I received the within order to show cause and temporary restraining order on the 16th day of November, 1915, at Juneau, Alaska, and that I served the same on the 16th day of November, 1915, at Juneau, Alaska, on the Juneau Ferry and Navigation Co., by handing to and leaving with E. J. Margrie, Manager of said company, a certified copy of the original writ, said service made personally and in person.

Dated at Juneau, Alaska, November 16th, 1915.

14 *Juneau Ferry and Navigation Company*

Marshal's Fees \$3.00. Paid by George Irving,
Atty.

H. A. BISHOP,
United States Marshal.
By J. L. Manning,
Office Deputy.

[Endorsed]: Filed in the District Court, District of Alaska, First Division. Nov. 15, 1915. J. W. Bell, Clerk. By C. Z. Denny, Deputy. Original. In the District Court for the District of Alaska, Division No. 1. C. P. Morgan et al., Copartners Doing Business Under the Name of the Island Ferry Co. vs. Juneau Ferry and Navigation Company, a Corporation. Number ——. Order to Show Cause and Temporary Restraining Order. George Irving and S. H. Milwee, Attys. for Pltffs. [10]

*In the District Court for the Territory of Alaska,
Division No. One, at Juneau.*

No. 1392-A.

C. P. MORGAN, R. B. COCHRAN and H. JOHANSEN, Copartners, Doing Business Under the Name and Style of the ISLAND FERRY COMPANY,

Plaintiffs,

vs.

JUNEAU FERRY & NAVIGATION COMPANY,
a Corporation,

Defendant.

Answer to the Rule to Show Cause.

Now comes the defendant by its attorney and for answer to the rule to show cause why a temporary injunction should not issue herein, alleges as follows:

I.

Said complaint does not state facts sufficient to authorize the issuance of any injunction, temporary or otherwise, in this, that it appears from said complaint and the exhibit attached thereto that the plaintiffs are claiming the right to the exclusive possession and use of the float mentioned in the complaint under a pretended lease from the city of Douglas, Alaska, which said lease purports to be executed by Peter Johnson, President of the Common Council and ex-officio Mayor, while the said Peter Johnson as a matter of law had no authority to execute any such lease and there are no facts alleged showing any such authority to have been given him. [11]

II.

The city of Douglas or its Common Council have no legal authority to execute the pretended lease to the said dock alleged in the complaint, or any lease of said dock or float owned by said municipality to the exclusion of others desiring similar accommodation thereat.

III.

And the defendant further alleges that it is engaged in the business of operating a ferry between the towns of Juneau, Douglas, Treadwell and Thane all on Gastineau Channel, a navigable arm of the

Pacific Ocean, and has been so engaged for more than twenty years last past; that it has invested in its vessels and other appurtenances in connection with the said business the sum of upwards of \$50,000. That the float referred to in the complaint is a part of a public dock on the navigable waters of Gastineau Channel, constructed by the municipality of Douglas City, Alaska, some years ago under the authority contained in the Alaska Civil Code authorizing municipalities to provide for the construction and maintenance of streets, alleys, sewers and wharves, that said authority, as the defendant is advised and therefore alleges, only permits the construction and maintenance of such wharves for the use of the general public desiring accommodation thereat and does not authorize the granting of special or exclusive privileges to any person or corporation. That a part of the public served by the defendant find that it is more convenient to land at said float than elsewhere and the defendant is and has ever been ready and willing to pay all reasonable charges to the said city of Douglas when it shall have established a regular charge for the use of [12] said float as one of its landing places for the accommodation of the general public. And the defendant further alleges that it was the purpose and intention of the Common Council of the city of Douglas and of the plaintiffs in executing said pretended lease, to give to the plaintiffs a special privilege and advantage in the operation of their said ferry-boat to the detriment of the general public seeking transportation to and from said town, and especially to the detriment of the

business of the defendant. And the defendant further alleges that if the injunction herein prayed for is granted, it will result in giving to the plaintiffs a special and exclusive privilege for the use of public property and a part of public highways of the said city of Douglas and a part of the public highway leading from said city to the outside world, and will result in a great and continuing damage to the business of the defendant.

J. H. COBB,
Attorney for Defendant.

United States of America,
Territory of Alaska,—ss.

E. J. Margrie, being first duly sworn, on oath deposes and says: I am general manager of the above-named defendant corporation. The facts set forth in the above and foregoing answer are true.

E. J. MARGRIE.

Subscribed and sworn to before me this the 18th day of November, 1915.

[Notarial Seal]

E. L. COBB,
Notary Public in and for Alaska.

My commission expires Dec. 3, 1918.

Filed in the District Court, District of Alaska,
First Division. Nov, 22, 1915. J. W. Bell, Clerk.
By ———, Deputy. [13]

*In the District Court for the District of Alaska,
Division No. One, at Juneau.*

No. 1392-A.

C. P. MORGAN and R. B. COCHRAN and H.
JOHANSEN, Copartners, Doing Business
Under the Firm Name and Style of THE
ISLAND FERRY COMPANY,
Plaintiffs,

vs.

THE JUNEAU FERRY AND NAVIGATION
COMPANY, a Corporation,
Defendant.

Injunction Order.

The plaintiffs in the above-entitled cause having commenced an action in the District Court for the District of Alaska, Division No. One, against the above-named defendants and having prayed for an injunction against the said defendant requiring it to refrain from certain acts in said complaint and hereinafter more particularly mentioned, upon reading the said complaint in said action duly verified by the oath of C. P. Morgan, one of the plaintiffs and upon the hearing of proof under oath in open court and it satisfactorily appearing to me that it is a proper case for an injunction *pendente lite* and that sufficient grounds exist therefor and an injunction bond having been given, approved and as required by me in the sum of One Thousand Dollars, it is therefore ordered by me, the Judge of the said District Court that until further order in the premises, you, the said

Juneau Ferry and Navigation Company, a corporation, and all your servants, counsellors, attorneys, solicitors and agents and all others acting in aid or assistance of you and each and every of you do absolutely desist and refrain from landing your boats at that certain north float or landing place located on the north side [14] of the city dock or wharf at the town of Douglas, Alaska, or in anywise trespassing upon or occupying same.

To the Juneau Ferry and Navigation Company, a corporation.

Dated this 14th day of December, 1915.

ROBERT W. JENNINGS,

Judge.

Filed in the District Court, District of Alaska, First Division. Dec. 14, 1915. J. W. Bell, Clerk. By C. Z. Denny, Deputy. [15]

*In the District Court for the Territory of Alaska,
Division Number One, at Juneau.*

No. 1392-A.

C. P. MORGAN and R. B. COCHRAN and H. JOHANSON, Copartners, Doing Business Under the Name and Style of THE ISLAND FERRY COMPANY,

Plaintiffs,

vs.

JUNEAU FERRY & NAVIGATION CO.,

Defendant.

Bill of Exceptions.

BE IT REMEMBERED that on the hearing and trial of the motion for a temporary injunction pending the final trial of this suit, the following testimony was introduced in addition to the sworn complaint and the affidavits to the answer to the rule to show cause why such temporary injunction should not be issued, and the following proceedings had, to wit:
[16]

*In the District Court for the District of Alaska,
Div. No. 1, at Juneau.*

No. 1392-A.

C. P. MORGAN and R. B. COCHRAN and H. JOHANSEN, Copartners, Doing Business Under the Name and Style of the ISLAND FERRY COMPANY,

vs.

JUNEAU FERRY AND NAVIGATION COMPANY, a Corporation,

Transcript of Testimony.

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*In the District Court for the District of Alaska,
Division No. 1, at Juneau.*

No. 1392-A.

C. P. MORGAN, R. B. COCHRAN and H. JOHAN-
SEN, Copartners, Doing Business Under the
Name and Style of the ISLAND FERRY
COMPANY,

vs.

JUNEAU FERRY AND NAVIGATION COM-
PANY, a Corporation,

TRANSCRIPT OF TESTIMONY.

GEORGE IRVING, Esq., Appearing for
Plaintiffs;

JOHN H. COBB, Esq., Appearing for Defend-
ant.

[Testimony of M. J. O'Connor, for Plaintiffs.]

M. J. O'CONNOR, being duly sworn, testified on
behalf of plaintiffs as follows:

Direct Examination by Mr. IRVING.

Q. Your name? A. M. J. O'Connor.

Q. You reside where? A. Douglas.

Q. How long have you resided in Douglas?

A. About 17 years.

Q. State whether or not you were ever Mayor of
the city of Douglas. A. Yes, sir.

Q. What years, if you remember?

A. I think I was Mayor of the town from 1909 to
1915.

Q. Nineteen—

A. Served six years Mayor of the town.

(Testimony of M. J. O'Connor.)

Q. Do you remember about the time when a certain float was [18] constructed—you remember the time of the erection and building of the city dock?

A. I do, sir, very well.

Q. Who was at the head of town affairs at that time?

A. I was. I advocated and caused to be built the city dock.

Q. Yes?

A. To break the monopoly that existed by the Juneau Ferry and Transportation Company.

Q. Do you remember the building of any float on the north side of that dock? A. Yes, sir.

Q. When, about what year was that float put in there. Mr. O'Connor?

A. When we built the dock we also built a float for the public, but we found by experience that we put it on the wrong side of the dock, it was on the north side of the dock, and it stood there for about two years, but it was—on account of the elements and exposed to the north wind, we found it was on the wrong side of the dock, and I think about 1911 we transferred the float to the other side.

The COURT.—Is that the float in controversy?

A. That is the float, north side, the float in controversy is on the north side. Now, the float used by the general public is on the south side where sheltered from the weather.

Q. (By Mr. IRVING.) Now, Mr. O'Connor, when you found that the north winds and seas came on the north float what did the city do regarding the

(Testimony of M. J. O'Connor.)

south float, why, what did they do regarding making it—

A. We put the float that was originally on the north side on the south and added on, making ample accommodations for tying up—the float now on the north side of the city dock is a float that Mr. Murray gave me, Mayor of the town acting for the city. It was in disuse and he gave me this and I had [19] it erected where it now stands as an inducement for an independent ferry to land.

Q. Why was it that you offered—or did you build the float for an inducement for the ferry to land?

Mr. COBB.—I object to that, your Honor.

The COURT.—Well, this is a restraining order, not a trial of a case. I will admit it.

Q. Why was it that this float was put there for an inducement for opposition ferry to land?

A. Because we were paying an exorbitant rate between Douglas and Juneau and there was no place for a ferry to land.

Q. Did the Juneau Ferry and Navigation Company have a wharf and float of their own at that time?

A. Yes, sir, they always had. I might state for the benefit of the Court that this float that is in use now, that has been leased by the city to the Island Ferry Company, was originally put up by Mr. Murray of Douglas, to provide a landing place for an independent ferry and it was no sooner constructed, your Honor, than the Juneau Ferry and Navigation Company leased the float from Mr. Murray, fenced up

(Testimony of M. J. O'Connor.)

the front of it, prevented the public from landing there and using it, and still took their quarter from the people of Douglas.

Q. Did you ever notice a sign upon the float or wharf of the Juneau Ferry Company with regard to boats landing there? A. Beg pardon?

Q. Did you ever notice a sign upon the float or dock regarding other boats landing there?

A. I have, sir. A man could not land, prior to this city dock being built, could not land in Douglas without he waded up the beach in mud, if he, even if he rowed to Douglas in a skiff he would not be allowed to land at the ferry dock. [20]

Q. At the time of the erection of the city dock at Douglas, this float being a part of it, was there—you, as Mayor—did not have any correspondence or talk with the officers of the Juneau Ferry and Navigation Company regarding it?

A. At the time the dock was erected?

Q. Yes.

A. Mr. Margrie went over into my office and tried to induce me not to build that dock.

Q. Tried to induce you not to build that dock?

A. He said the Juneau Ferry and Navigation Company were not making a cent, and he wanted me to come over to Juneau and look over the books and see how they were losing money, but this last year the city dock that lost so much money for Mr. Margrie on the other side netted the city of Douglas a little less than six thousand dollars.

Q. And this float is a part of that dock?

(Testimony of M. J. O'Connor.)

A. This float is a part of that dock.

Q. And that dock is being used by the general public for the general good and general profit, is that so?

A. By the general public for the general good, and this float—while I am not on the Council, this float was leased to this company for the general public and for the general good.

Q. Mr. O'Connor, the condition of this particular float that has been leased, has it been in condition for the landing of boats at it for some time past, or has it fallen into disuse?

A. Very few landed, but it has not been kept in repair; in fact, no boat could land there to-day.

Q. As a citizen of Douglas, do you know whether the Juneau Ferry and Navigation Company ever made regular landings prior to the time lease was given to the Island Ferry? [21]

A. No, sir, they never did.

Q. They got just as good landing?

A. A better landing, their own right to-day.

Q. And their leasing—this landing that has been leased to the Island Ferry Company is in—the gangway on the float leading to what street in Douglas—leads into Front Street, don't it?

A. Leads into Front Street.

Q. Now, the landing float of the ferry company, of the Juneau Ferry and Navigation Company, that leads into Front Street also, doesn't it?

A. Yes, sir, into the same street.

Q. What would you say as to the two floats, as a citizen of Douglas and ex-Mayor of the town, as to

(Testimony of M. J. O'Connor.)

the position of the two floats as being, one being better than the other, or as to whether they are located in such a shape they would both be convenient?

A. One is just as convenient as the other. The fact of the matter is that the float owned by the Juneau Navigation Company to-day is the better than the one leased to the other parties.

Q. Now, the float that has been maintained by the city of Douglas on the south side of the wharf, in what condition is that as against the condition of the float on the north side where the Juneau ferry insists on landing?

A. The float on the south side of the dock is the best—from the north wind—when no wind—

Q. And the condition of the property of the Juneau Ferry and Navigation Company, piles and floats—

A. It is the best float in Alaska.

Q. And when a boat doesn't get into that float on the south side—now, just before that, what is the south side float, as the citizens and yourself—how do you recognize it?

A. As the float for the general public to tie up.

[22]

Q. As the float for the general public to tie up. That is, Mr. O'Connor, I take it, that float was made and dedicated as a public utility for the general use of the public?

A. That is what it was built for.

Q. State what this other float on the north side was built for?

A. That was built to provide a landing for an independent ferry if such came on the run.

(Testimony of M. J. O'Connor.)

Q. Was it ever intended for general utility purposes outside of that?

A. It was not. It has been used for some—I put the float in, acting for the city and I know what I put it in for, I put it in to help the people of Douglas to get better rates between Juneau and the Island.

Q. What is the approximate size, if you know, of the float on the north side that has been leased to the Island Ferry Company, what is the size?

A. Probably forty feet long; but it is almost submerged, it is water-logged—it is only—that was used five years by Mr. Murray.

Q. Now, as against that, what is the condition of the float on the south side where the Juneau Ferry and Navigation Company have been landing their gas-boat—what is the name of that?

A. “Teddy.”

Q. What is the condition of that float as against the condition of the float on the north side where they have had a landing unobstructed?

A. No comparison.

Q. No comparison at all? A. No.

Q. Which is better? A. The one on the south.

Q. Now, in the answer—do you know as a citizen of Douglas as to whether there has not been any remonstrance on the part of the public against the Juneau Ferry and Navigation Company landing at this south side float? [23]

A. Not a man, no.

Mr. COBB.—I object. Irrelevant and immaterial.

(Testimony of M. J. O'Connor.)

The COURT.—Whether there has been any remonstrance of the public in Douglas against the Juneau Ferry and Navigation Company landing at this south float? A. Yes.

The COURT.—It will be overruled. I will take the whole thing in—

Mr. IRVING.—It may be material.

A. It has been for the public including the Juneau Ferry and Navigation Company.

Q. Do you know the present condition of this float on the north side—state to the Court what condition it is in now?

A. It is in condition for ——— boat right now.

Mr. COBB.—What boat is that?

A. That is the one that has been lost. There is no boat landing there to-day, neither the Juneau Ferry nor the other one.

Q. Why?

A. Because the weather does not permit them to land there, the float is partially submerged, and the seas are washing over it.

Q. Now, what is the condition of the south float to-day? A. Good.

Q. A boat can land there?

A. I have been on it, that is ride back and forth, on it, twice, landed without any trouble.

Mr. IRVING.—That is all, Mr. O'Connor.

Cross-examination by Mr. COBB.

Q. Ferry-boats cannot go under the main wharf, can they?

A. Cannot go under the main wharf, no, sir. [24]

(Testimony of M. J. O'Connor.)

Q. Now, the main wharf extends from the city front out to a little island known as Juneau Island?

A. Yes.

Q. In order to reach the south float at all you have to go clear round Juneau Island?

A. Mayflower Island.

Q. Mayflower Island. Is that a fact?

A. Yes, sir, that is a fact.

Q. And quite a lot of time is lost going round there?

A. Not a great deal—takes probably five minutes to get round.

Q. About five minutes lost?

A. About five minutes lost.

Q. At any rate. As a matter of fact, that south float was put up for the small fishing boats?

A. For the general public; and we found it was too small, and I, representing the city, added another—

Q. Mr. O'Connor, just answer the question. It was put up there principally for the use of the small fishing boats to tie up for shelter, was it not?

A. No, sir.

Q. Put up for a ferry?

A. For the use of the general public.

Q. Put up for a ferry? —answer the question, don't sit there—

A. Yes, if the ferry wanted to use it.

Q. If the ferry wanted to use it? A. Yes.

Q. Don't you know no ferry wanted to use it?

A. They are using it now, two ferries used it to-day, to my knowledge.

(Testimony of M. J. O'Connor.)

Q. All right. Why did you put the one on the north side?

A. To induce somebody to put on an apposition ferry, Mr. Cobb.

Q. Why didn't the one on the south side induce some one to put on an apposition ferry?

A. Well, we wanted to save that for the general public. [25]

Q. Yes. Now, the facts about it, Mr. O'Connor, are in ordinary weather, not a day like to-day when you need a sheltered landing place, in ordinary weather it is much more convenient in the ordinary ferry business in Gastineau Channel to use that float on the north side than on the south?

A. Yes, in ordinary weather.

Q. And it was put there for the purpose of providing a landing place for a ferry?

A. Yes, the ferry has got it right now.

Q. That is what it was put there for?

A. Yes, sir, that is what it was put there for.

Q. Now, you stated a moment ago the Juneau Ferry and Navigation Company had never used this float prior to the time the lease—

A. Not until the independent ferry went on.

Q. Are you positive of that?

A. Well, I have never seen them in there to my knowledge.

Q. You stated it as something positive. I want you to tell the Court what you know about it—do you know they never did use it?

A. I know that I never saw them use it.

(Testimony of M. J. O'Connor.)

Q. That is all you know about it?

A. Might have gone in there in the dark.

Q. Might have gone in there in the dark—in the daylight and you not seen them?

A. Well, they might, yes, sir; not likely, they got a better float and just as convenience one as this, Mr. Cobb.

Q. And if anybody wants to land over there they would probably take them there?

A. No, sir, they would not. [26]

Q. Would not?

A. No, sir,—I wanted to land there and your ferry company will refuse to land there—they said positive—also they said they had a float of their own.

Q. I will come back to that in a moment. You stated that they tried to get you, to prevent you from building a public dock there, over there?

A. Yes, sir.

Q. When they wanted to sell you that dock at less money than it cost? A. No.

Q. Didn't they offer to sell it to you?

A. No, sir, did not.

Q. Positive of that?

A. I am positive of that, yes, sir; I know what they offered—that wasn't the first time—there was a few citizens once had attempted to build a dock; had piles bought—why didn't they build a dock? Ask Mr. Margrie—I built the dock, though.

Q. You built the dock? A. Yes, sir.

Q. And you put in this float as a public ferry landing? A. The float on the south side.

(Testimony of M. J. O'Connor.)

Q. What did you put in the one on the north side for?

A. I told you what I put it in for.

Q. Let us hear it again.

A. To give an independent boat—for a landing for an independent boat.

Q. For a ferry landing?

A. Yes, sir, for a ferry landing. [27]

Q. (By Mr. IRVING.) Now, Mr. O'Connor, you put in that north float so that the independent ferry would have a convenient place to land?

A. That is what it was put in there for, for the benefit of the people.

Q. For all the city, looking at this time for an investment for the people of Douglas to get another ferry to reduce the fare?

A. It was leased for the public good—this Juneau Ferry Company they are going in and out there empty-handed.

Q. Now, Mr. O'Connor, right in that connection. Mr. Cobb asked you as to whether or not the Juneau Ferry and Navigation Company had ever landed—now, I ask you this; did the Juneau Ferry and Navigation Company ever make general use of this particular north side float for a ferry landing prior to the time of the Island people—

A. They never did, they might have landed there but didn't use it as a general landing dock.

Q. I take it they might have landed there at times? A. Yes.

Q. Never used generally by them?

(Testimony of M. J. O'Connor.)

A. Never was.

Q. Mr. O'Connor, does the Juneau Ferry and Navigation Company own a dock and a float there of their own?

A. They own a dock and float much better than this one that has been leased.

Q. And they have continuously landed—by that I mean generally continuously or continuously generally, either way you want to put it—landed at their own float at all times?

A. For twenty years.

Q. For twenty years. Before the steamers ran in, on the Southeastern Alaska route, where did they land? A. At the city dock. [28]

Q. Prior to the time of the building of the city dock where did they land?

A. At the ferry dock.

Q. Ferry dock. Is that dock controlled and owned by the Juneau Ferry and Navigation Company?

A. Juneau Ferry and Navigation Company.

Q. Now, when the city dock was built, Mr. O'Connor, did these boats immediately transfer, all the Southeastern Alaska boats, there?

Mr. COBB.—Taking a great deal of time.

A. No, they didn't. They —— the town for a year, they tried to muzzle the town and break the spirit of the people but we voted them out; they are landing there now.

Q. Who was behind that move? A. I was.

Q. Who was behind the move to keep these steam-

(Testimony of M. J. O'Connor.)

ships, boats from landing at the city float?

A. Well, I imagine the Juneau Ferry and Navigation Company.

Q. Why would they be behind such a move?

Mr. COBB.—I object.

Mr. IRVING.—

The COURT.—I don't know what you are talking about. The question has been answered.

Mr. IRVING.—Well, I just wanted to talk.

The COURT.—Proceed. Ask another question.

Q. (By Mr. IRVING.) Now, Mr. O'Connor, what was your answer there, I didn't get it.

Mr. COBB.—It has been answered. I don't want to—

The COURT.—You move to strike it out? Your motion is overruled. Ask another question.

Q. How long a period was it this steamboat—the town of Douglas? A. About six months. [29]

Mr. COBB.—Now, wait a minute. I ask to have his answer stricken. Irrelevant and immaterial.

The COURT.—Overruled.

Mr. COBB.—Exception.

The COURT.—This is not a trial of the case, gentlemen.

Mr. COBB.—The Court thinks it is material.

The COURT.—Well, if it isn't material it will not hurt you.

Mr. COBB.—This isn't true, I don't want to go—

The COURT.—If it isn't material you don't have to go.

Mr. COBB.—I think the Court should rule on

(Testimony of M. J. O'Connor.)

these questions out of fairness—I realize it is doing Mr. O'Connor a great deal of personal good to roast the Ferry Company.

Mr. O'CONNOR.—No, sir, it does me a lot of good to stand here and represent the people here.

The COURT.—Don't go too far.

Mr. IRVING.—That is all.

Q. (By Mr. COBB.) Mr. O'Connor, the time you exercised this wonderful public spirit of which you speak you were agent for a steamship company?

A. No, sir, I was not.

Q. Not for the Humboldt?

A. No, sir, I was not. I am agent now, I was not then.

Q. Was not then? A. No, sir.

Q. Positive of that?

A. I am. I built that city dock, I had nothing to do with the Humboldt steamship.

Q. Who was the agent then?

A. Mr. Hubner, I think, Hubner, the druggist.

A. Well, I really can't tell you now. [30]

Q. When did you become the agent for it?

Q. You mean you can't or you won't tell?

A. What?

Q. You can't or won't tell?

A. I have nothing to hide here. It would not matter if I was agent for the steamship company.

Q. Can you tell when you became agent?

A. I really don't know, I would have to look up the records and find out, that agency is a very small matter with me. I backed the Humboldt Steam-

(Testimony of M. J. O'Connor.)

ship Company just for the reason I am backing up this independent boat to-day, to save the people of Alaska—

Mr. COBB.—I wish the Court would compel the witness to answer and not talk so much.

Mr. O'CONNOR.—I will answer.

Q. Do you know whether it was before or after you built the dock?

A. After, I am satisfied of that.

Q. You got a commission on all freight that was landed there? A. A commission?

Q. Yes.

A. Oh, no, sir, I didn't get any commission.

Q. What did you get?

A. What did I get? I got nothing. What do you mean?

Q. As agent?

A. I got five per cent on all the tickets I sold. I got nothing for freight landed; doesn't matter to me whether it is one pound or ten thousand.

Mr. COBB.—That is all.

Mr. IRVING.—That is all, Mr. O'Connor. [31]

[Testimony of Henry Brie, for Plaintiffs.]

HENRY BRIE, being duly sworn, testified on behalf of the plaintiffs, as follows:

Examination by Mr. IRVING.

Q. Your name? A. Henry Brie.

Q. Where do you live? A. At Douglas, Alaska.

Q. How long? A. About eleven years.

Q. Ever a member of the City Council of Douglas?

A. Yes, sir.

(Testimony of Henry Brie.)

Q. What year were you a member of the City Council? A. About '10, '11 and '12.

Q. About '10, '11 and '12. Were you a member of the City Council at the time the float on the north side of the city dock was placed there?

A. Yes, sir.

Q. Do you know how or what for it was placed there and for what purpose? A. Yes, sir.

Q. Tell the Court.

A. We spoke about it in the Council-room to put a float there to have an opposition ferry and at that time I believe there was some parties wanted to run.

Q. Willing to run?

A. Willing to run it, didn't get it.

Q. Do you remember on account of these parties talking about putting in an independent float that the people—

A. The float was built and Mr. O'Connor got a present of Mr. Murry for a float, giving the float.

Q. That goes to the city?

A. He reported it at the Council meeting that time, and if he built a float he gets the float from Murray, if he build it, and we build that float that time.

Q. And tell the Court positively now, if you can, just what the float was built for, make it a precise answer.

A. It was built for lease or rent for the benefit of the city of Douglas and for the citizens of Douglas.

[32]

Q. For the purposes of an independent ferry?

(Testimony of Henry Brie.)

A. Independent ferry, yes, sir.

Q. Why was that done?

A. Well, in the first place, we thought it a good investment, in the second place to reduce the fare between Douglas and Juneau.

Q. And you as Councilman at that time were acting for the public good?

A. People of Douglas, yes, sir.

Q. And that is the reason, and acting for the public good, why the north float was put there?

A. Exactly.

Q. And another reason, it was more convenient for the ferry crossing to land quickly?

A. Yes, sir.

Q. Were you a member of the Council when the south float was built? A. Yes, sir, I was.

Q. What was that float for?

A. It was for landing, for everybody, ferries or individuals.

Q. Do you know the condition of this north float at this time? A. Yes, sir.

Q. What kind of condition?

A. She is in very poor condition at this time.

Q. Is it water-logged?

A. The float is water-logged.

Q. How far is the platform on these logs from the surface of the water?

A. To-day she is under water, to-day, but yesterday she was a few feet.

Q. During your time as member of the Council and also during your residence in Douglas do you

(Testimony of Henry Brie.)

know as to whether or not the Juneau Ferry and Navigation Company have used this particular northside float for general landing of their ferry?

[33]

A. Not for general landing, no, sir; she used it once when the old wharf was repaired; I know they landed.

Q. When their own was—

A. When they could not land on their own float.

Q. When they could not land on their own float?

A. Yes, sir.

Q. Have you as a citizen of Douglas traveling on these ferries asked to be landed at that float?

A. Yes, I did.

Q. Tell the Court.

A. Well, I asked once Waldo States why don't he go to the new float, that she was built to land over there; he say his orders are to land on their own dock.

Q. Had a float of their own?

A. Had a float of their own.

The COURT.—He said that?

A. His orders was to land on the Juneau Ferry and Navigation Company's and he had to go there.

Q. And he refused to land you at the other float?

A. Yes, certainly, he landed me on the Juneau Navigation Company; and another time I spoke—in liquor business I speak to Zuenda Company—I tell him I want my beer landed on the new float what was built that time; he told me Mr. Margrie told him he got his own float to land on, wouldn't land on anybody else's float.

(Testimony of Henry Brie.)

Q. (By IRVING.) On the beer that was landed at the ferry was there a dockage charge to you?

A. Yes—I know he pays ten cents for bringing it over.

Q. As to the dockage you don't know?

A. No, he pays, the brewery man pays the delivery man and the ferry. [34]

Q. Yes. About how large, Mr. Brie, is this float on the north side as compared with the float on the south side? A. About how wide?

Q. Just as near as you can judge, how large?

A. It is much nearer than the south side.

Q. Much shorter? A. Much shorter, yes.

Q. And the south side float is a protected float?

A. That is the best float to land on for any boats, from the north wind particularly.

Q. And the north float is not?

A. No, on the north you can land any time, any weather.

Q. And you as a member of the Common Council positively state it was not intended to build—

Mr. COBB.—I object. He has not stated anything of the kind. Counsel is putting testimony in his mouth—Mr. Brie says—

Mr. BRIE.—I do and always will, Mr. Cobb, I do make the statement and always will.

Mr. IRVING.—Sure he did.

Mr. COBB.—He would not have said it the way counsel—

The COURT.—Don't lead the witness.

Mr. COBB.—I object to leading the witness.

(Testimony of Henry Brie.)

The COURT.—Objection is to the question as leading. Ask him in another form.

Q. (By Mr. IRVING.) Now, state to the Court what you know about this north side float of your own knowledge, and the south side float as regards the relation of one float, to the general citizenship of the town and the other float as regards the general citizenship of the town.

A. During that meeting of the City Council the question came up about the south float when we intended to build the [35] north float and we agreed, all agreed to it, that the *the* south float is to be for landing, for everybody, passenger, ferries or any one, but the north float is to be either leased or done something to bring revenue for the city; that was agreed upon that meeting; we talked it over and agreed to it.

Q. As to whether or not this north side float has been kept in repair by the city when it was not leased?

A. It was kept in pretty good repair when we were in.

Q. Has it been kept in repair of late?

A. No, it hasn't; of course, Mr. Smith—of the Juneau Ferry and Navigation Company and he is a councilman.

Q. Mr. Elmer Smith?

A. Mr. Elmer Smith, yes.

Q. And he was—

A. He didn't like the idea of being outvoted.

Mr. IRVING.—That is all.

(Testimony of Henry Brie.)

Cross-examination by Mr. COBB.

Q. Did you ever fix any charges to be paid for landing at this north float? A. Sir?

Q. City Council fix any charges?

The COURT.—Fix any rates, did the Council ever fix any rates?

A. No, there was no rates; if any parties landed there rates all right but if we could find somebody only to lease it then charge, would have charged what was reasonable.

Q. (By Mr. COBB.) It was put there you state, you agree with Mr. O'Connor, primarily for ferry landing?

A. For landing or for revenue to bring revenue into the city, that was what it was there for. [36]

Q. Now, as a matter of fact, it was put there for a ferry landing because the south float is not very convenient for ferry purposes, is it, on account of going around the island?

A. Not exactly, not for that reason.

O. What reason?

A. Only one reason, it was put there for the benefit of the citizens of Douglas to bring in revenue and get some money out of it.

Q. The south float? A. The north float.

Q. I ask you if the north float was not put in for a ferry landing because the south float is not very convenient for the ferry business on account of having to go around the island?

A. I believe that the south float is just as convenient as the north float, this kind of weather it is more convenient.

(Testimony of Henry Brie.)

Q. This kind of weather. You know you have to lose quite a bit of time in going around the island?

A. It is better to lose time than person's life.

Q. Exactly. In ordinary weather how would it be? A. How would it be?

Q. The north float?

A. You can land at the north float easy, yes, and it is much more convenient for a person that has the lease.

Q. It is more convenient? A. Yes.

Q. Regardless of the lease? A. —

Q. How is that?

A. If you haven't lease you can't handle that.

Q. That is the question we are trying. Independent of the [37] lease, isn't it much more convenient?

A. I am not a steamboat man.

Q. You are not a steamboat man. Now, Mr. Brie, when did you put in this float?

A. I believe it was in 1911.

Q. 1911. Four years ago? A. Yes.

Q. And you never leased it at all, never got any revenue from it until the first of this year—the first of this present month?

A. Yes, we could not get anybody. The Juneau Ferry Company put everybody out.

Q. I am not asking what the Juneau Ferry Company— A. I thought you did.

Q. I am asking you a simple question: if you ever leased it or got any revenue?

A. No, we had some applications but they didn't come through.

(Testimony of Henry Brie.)

Q. Who made application?

A. Several boys over there.

Q. Who?

A. People from down below,—wanted to put in an independent ferry?

Q. Who? A. A fellow from Seattle.

Q. What is his name? A. Ebner.

Q. William Ebner?

A. No, no, Frank Ebner is his name.

Q. Did he negotiate with you about it?

A. He spoke to me about it.

Q. Wanted to lease it? A. We didn't lease it.

Q. Did he want to lease it?

A. He wanted to take it so—

Q. —Can't he land there without leasing?

A. No, he couldn't, not run a ferry, he land, get in with a small boat and get away.

Q. What prevented him from landing ferry?

A. Juneau Ferry Company tried to prevent these fellows to [38] land, told them not to land.

Q. Elmer Smith prevent him? A. Tried to.

Q. Would Elmer Smith prevent Ebner?

A. No.

Q. What prevented him?

A. I am telling you what Elmer Smith did to the others.

Q. What prevented—what would Smith do to prevent Ebner from landing there?

A. Well, he didn't, couldn't prevent him from landing because he didn't land there. He didn't have any boat. He just looked around for an opening to

(Testimony of Henry Brie.)

put a ferry-boat on; that is the idea.

Q. And he wanted to know if there was a dock?

A. Yes, sir, he came out to my place of business.

Mr. COBB.—That is all.

Q. (By Mr. IRVING.) You say you could not lease, tell the Court the reasons, if you know, why it could not, the one the Island Ferry Company has now got.

A. Why it could not be leased at the present time?

Q. No, why it could not be leased in the former times.

A. There was some applications to me privately and others but I guess the business didn't look profitable to them, they didn't lease, it, otherwise they would have leased it.

Q. Was there any float ever built there for an independent you know about? A. No, sir.

Q. You don't know of any? A. No, sir.

Mr. IRVING.—That is all.

Q. (By Mr. COBB.) Mr. Brie, were you a member of the Council at the time this dock was built, city dock?

A. No, I didn't—that was built in several years you know, [39] built several years, the first year I don't know, I was there the second year.

Q. Just for the purpose of clearing up the record: you remember the Juneau Ferry and Navigation Company did offer to sell its float, its dock to the—

A. Its dock, yes, after they went broke, we put them out of business, they tried to sell after we put them out of business, the city put them out of business.

(Testimony of Henry Brie.)

Q. Didn't they offer to sell? A. Yes.

Q. Did you build the dock? A. Yes.

Q. They tried to offer to sell it?

A. For an enormous price, for about forty or fifty thousand dollars.

Q. Didn't they offer to sell it to you for six thousand dollars?

A. No, no, never, no, twenty-five thousand dollars, two years after we built the dock.

Q. You are positive that they didn't offer to sell at eleven thousand dollars, just what it cost them?

A. No, sir.

Q. Before you built it?

A. No, sir, afterwards, four years afterwards, but we wouldn't buy it any way because Margrie was the head of it.

Q. (By Mr. IRVING.) And after the boats quit landing there—you put them out of business—did they offer to sell it?

A. Yes, after we put them out of business.

Q. How much did they offer?

A. I believe twelve thousand, I can't remember.

Q. As a citizen of Douglas traveling between Douglas and Juneau what fare did you pay prior to the running of the Island Ferry Company?

A. Twenty-five cents each way. [40]

Mr. COBB.—I wish—

The COURT.—I don't see how that bears.

Argument by counsel for the plaintiff.

The COURT.—But your rights don't depend on that.

(Testimony of Henry Brie.)

Mr. IRVING.—Well it depends on this element.

The COURT.—Well, how far do you want to go—all right you may answer that question.

Q. (By Mr. IRVING.) Now, prior to the time of the operation of the Independent Ferry company what did you pay?

A. Twenty-five cents each way.

Q. And now since the ferry company, the Island Ferry Company, has commenced operation?

A. Fifteen cents each way.

Q. What is the cause of the reduction?

A. Ten cents each way.

Mr. COBB.—We object.

Mr. IRVING.—That is all.

Q. (By Mr. COBB.) During these times there wasn't half the travel there is in the last current year, was there? A. During what time?

Q. During the times you paid this twenty-five cents? A. Wasn't half the travel?

Q. During the past year?

A. I think there was more travel than now.

Q. Five years, more travel than there is now?

A. I am not talking about five—two, three.

Q. As a matter of fact the business has increased within the last two years?

A. Three years. There was more travel then than there is today.

Mr. COBB.—That is all. [41]

[Testimony of L. H. Keist, for Plaintiffs.]

L. H. KEIST, being first duly sworn, testifies on behalf of plaintiffs, as follows:

Direct examination by Mr. IRVING.

Q. Your name, if you please? A. L. H. Keist.

Q. Where do you live? A. In Douglas.

Q. How long have you lived in Douglas, Mr. Keist?

A. About fourteen years.

Q. Were you ever a member of the Council of the Town of Douglas? A. Yes, sir.

Q. Do you remember when this float was built on the north side of the city wharf? A. Yes, sir.

Q. What for? A. For an opposition ferry.

Q. For an opposition ferry? A. Yes, sir.

Q. And do you know the dock, the float that is built on the south side of the float? A. Yes, sir.

Q. What was that built for?

A. That was built for general public.

Q. Built for the general public. And do you know as to whether or not the Juneau Ferry and Navigation Company have a dock and float of their own over there? A. Yes, sir.

Q. What condition, if you know, is this north side float in at the present time?

A. Not in very good condition.

Q. Very poor condition?

A. Very poor condition at present.

Q. How long has it been in poor condition?

A. Quite a little while; ever since it has been put there hasn't been very good.

(Testimony of L. H. Keist.)

Q. Has any ferry-boat landed at that wharf until the time the Island Ferry Company commenced to operate, generally? A. No, not to my knowledge.

Q. Not to your knowledge. Has the Juneau Ferry and Navigation Company ever used that northside float of the city dock [42] generally?

A. They may have landed there a few times, I don't know.

Q. Not as a general thing?

A. Not as a general thing.

Q. Where have they landed generally?

A. At their own dock.

Q. Where is that?

A. It goes up D Street I think.

Q. On D Street? A. Yes, sir.

Q. Connected with the dock of the Juneau Ferry and Navigation Company at Douglas?

A. Yes, sir.

Cross-examination by Mr. COBB.

Q. Mr. Keist, the time this was built you say it was built for an opposition ferry, you mean to induce another ferry to come?

A. Yes, sir, that is what the idea was.

Q. For the public benefit of the town so as to get up competition?

A. Yes, sir.

Q. And thereby, by competition cut down rates, and so on? A. That is the way I understood it.

Q. That was about two years ago?

A. Oh, it has been longer than that.

Q. Four years I should say, about four years?

(Testimony of L. H. Keist.)

A. About that long.

Q. And no other ferry company was induced to come in notwithstanding the public landed until this present year, is that right?

A. Well there wasn't any boats allowed to lay—

Q. How is that?

A. There wasn't any boats allowed to lay at that outside dock, didn't allow them—

Q. At the ferry landing? A. Sir?

Q. The north dock, the north float?

A. There wasn't anybody allowed to tie boats, anybody could [43] come up and get off if they wanted to.

Q. On the south side, that was the dock for the small boats to tie up at? A. Yes, sir.

Q. That wasn't convenient for ferry purposes on account of having to go around the island?

A. Yes, not quite so convenient as the north side.

Q. Not practical for that purpose for that reason—loss of time?

A. Generally, benefit of all the small boats.

Q. But not particularly for ferries? A. No.

Q. Not adapted for that purpose, as I understand you?

A. Well, it is a good place to land at, little further.

Q. Have to run nearly round the island to get in there? A. (No answer.)

Q. (By Mr. IRVING.) That is the only inconvenience the ferry would suffer?

A. That is all I know of.

Q. Better float to land at? A. Yes.

(Testimony of L. H. Keist.)

Q. (By the COURT.) Now, when was the float on the north side built?

A. I don't know whether it was in 1910 or 1911.

Q. And when did the independent Island Ferry go in, the plaintiff in this suit, begin using that dock—when did they begin to use it?

A. I believe they began using—running in August; I am not on the present Council; I don't know anything about the lease.

Q. August of nineteen—of what year?

A. Of this year.

Q. Of this year. Well, now then, from the time that was built until the time the Island Ferry Company commenced using it, [44] what use did the city make of the float on the north side?

A. I don't think they got any benefit—

Q. No, but what use did they—

A. Anyone could land there, I guess, go up on the dock—

Q. Public float, if anybody wanted to land there, but nobody—no boats were allowed to lie there; is that what you mean? A. Yes, sir.

The COURT.—All right. That is all.

[Testimony of R. R. Hubbard, for Plaintiff.]

R. R. HUBBARD, being first duly sworn, testified on behalf of plaintiff, as follows:

(Questions by Mr. IRVING.)

Q. Your name, please? A. R. R. Hubbard.

Q. Are you the clerk of the town council of the town of Douglas? A. Yes, sir.

(Testimony of R. R. Hubbard.)

Q. Were you such clerk in October and November of this year?

A. Well, I got a leave of absence from the fifteenth of October to second of November.

Q. But you were clerk all the time, weren't you?

A. I was, Mr. Sorby was acting for me.

Q. You were clerk but not acting?

A. Yes, sir.

Q. Who acted in your place? A. Nels Sorby.

Q. Is that the records of the minutes of the Common Council of the town of Douglas?

A. Yes, sir.

Q. Will you open it to the meeting of November 1, 1915? A. Last meeting that date?

Q. Last meeting that date. A. Yes, sir.

Mr. COBBS.—Let's see it.

Q. (By Mr. IRVING.) What date was that meeting? A. November first.

Q. Will you read to the Court anything that may be in those [45] minutes regarding lease—renting of a certain float by the council:

A. It says: "Motion made and seconded that the north float Douglas City wharf be leased to the Island Ferry Company for one year at a rental of twenty-five dollars per month payable in advance. Motion carried.

Mr. IRVING.—That is all.

The COURT.—What page is that, Mr. Hubbard?

A. On page nineteen.

Q. And what is the title of it?

A. Minutes, regular meeting.

(Testimony of R. R. Hubbard.)

Q. That is the Minute Book?

A. Yes, sir, Minute Book.

Mr. IRVING.—That is all, if the Court please.

The COURT.—Any question?

Mr. COBB.—No.

The COURT.—That is all.

(Adjournment until 4 P. M., November 23, 1915.)

(4 P. M. Tuesday, November 23, 1915.) [46]

(4 P. M. November 23, 1915.)

[Testimony of Nels Sorby, for Plaintiffs.]

NELS SORBY, being first duly sworn, testified on behalf of plaintiffs as follows:

Direct Examination by Mr. IRVING.

Q. Your name? A. Nels Sorby.

Q. Were you a resident of the City of Douglas during the month of November last?

A. Yes, sir.

Q. What were you doing in Douglas at that time?

A. I was city clerk.

Q. You were city clerk, pro tem, for the time being? A. I was appointed by the Council.

Q. Yes?

A. During Mr. Hubbard's absence in Seattle.

Q. Were you present at a Council meeting at the Town Council of Douglas on the night of November first? A. I was.

Q. Yes. In what capacity? A. City clerk.

Q. Will you kindly state to the Court if there was an ordinance—a resolution or ordinance gotten up and passed by the Council at that time regarding any float over there? A. There was.

(Testimony of Nels Sorby.)

Q. Tell the Court about it.

Mr. COBB.—Going to prove the ordinance?

Mr. IRVING.—Not prove the ordinance, put on witness about the ordinance—the book, going to prove its passage by—

A. The record itself shows it passed.

The COURT.—How many members present at the meeting? A. All the members were present.

Q. How many is that? A. Seven.

Q. Seven, how many voted for the ordinance?

A. Six voted for leasing to the Island Ferry Company.

Mr. IRVING.—That is all. Just a moment. Who voted against it?—if you know? [47]

Mr. COBB.—Object to that as irrelevant.

Mr. IRVING.—All right, that is all.

[Testimony of C. P. Morgan, for Plaintiffs.]

C. P. MORGAN, being first duly sworn, on behalf of plaintiffs, testified as follows:

Direct Examination by Mr. IRVING.

Mr. IRVING.—Just before I go on to offer any interrogatories to Mr. Morgan, if your Honor please, in connection with the testimony Sorby I want to read to the Court Exhibit “B” of the pleadings in this case, which is made a part of the plaintiffs’—
(Reading.)

Q. Mr. Morgan, what is your name?

A. C. P. Morgan.

Q. Are you one of the plaintiffs in this action?

A. I am, yes, sir.

Q. What is the name of your concern?

(Testimony of C. P. Morgan.)

A. The Island Ferry Company.

Q. What is your business?

A. Our business is conducting a ferry between Juneau and Douglas and Thane on Gastineau Channel.

Q. What is the name of your ferry, present ferry?

A. Our present ferry is the "Gent."

Q. How long have you been in the Island Ferry Company?

A. Since the 4th of August, 1915. [48]

Q. Mr. Morgan, how are you operating, so far as the landing at that float is concerned?

Q. How are we operating? A. Yes.

A. In so far as the town is concerned—

The COURT.—I would rather hear for it is more to the point, how you are interfered with by these people landing there yourself, how does it affect your business?

Mr. IRVING.—Tell the Court.

A. We operate on a regular advertised schedule, sailing from Juneau at certain hours, sailing from the North float at Douglas at certain hours. The Juneau ferry have been operating the boat "Alma" for some time sailing from their own float in Juneau at certain hours and from their own float in Douglas at certain hours. As the business of the Island Ferry Company increased the Juneau Ferry and Navigation Company put in commission the gas-boat "Teddy," the gas-boat "Teddy" since her recent being in commission has been operating from their own float in Juneau to their float in Douglas

(Testimony of C. P. Morgan.)

and to the North float, which we use in Douglas, without an advertised schedule. It is apparent to us that the intention of the Juneau Ferry and Navigation Company—

Mr. COBB.—I shall object.

Mr. IRVING.—Tell what they did.

A. The Juneau Ferry and Navigation Company run the gas-boat “Teddy” from that without an advertised schedule and as a rule it arrived at that float, lay *at until* we, our approach was imminent, left just before our arrival; that is the action of the “Teddy.”

Q. And what would they do just prior to their leaving and [49] prior to your landing on float?

A. On arrival they blew numerous, very numerous whistles of various kinds.

Q. Did they blow your whistle?

A. We have a rule two whistles five minutes but the “Teddy” has been continuously blowing two whistles up to the moment of their departure, frequent whistle.

Q. When would they leave the float. Tell the Court all about that.

A. They have stayed at the float on one or two occasions until we were within one or two feet of it; as a rule leave before our arrival, few minutes before.

Q. Whether or not you know, as to whether or not the blowing of the whistle on landing at that float injured you and deceived the people thinking they were taking the “Gent”?

(Testimony of C. P. Morgan.)

A. It deceived the people. I have been advised directly by various people.

Mr. COBB.—I shall object to hearsay.

Mr. IRVING.—Yes.

The COURT.—Anything you know about it, tell us anything you know.

A. I have seen people coming down the dock when I have been on the “Gent,” I seen people stand on the Main Street of Douglas on hearing the two whistles of the “Teddy” hurry down and go aboard her.

Q. What was the fare between Douglas and Juneau and Juneau and Douglas up to the time that you commenced operating this independent ferry?

A. Twenty-five cents each way.

Q. What is it now?

A. Fifteen cents each way.

Q. Who lowered the fare?

A. The Island Ferry Company, its predecessor, the “Rex.” [50]

Q. You say when you started the boat you lowered the fare to fifteen cents?

A. Lowered the fare to fifteen cents.

Q. State whether it has been since that time.

A. It has been since the first day the “Rex” started.

Mr. IRVING.—That is all.

The COURT.—This lease you say, is that the lease that has been attached to this complaint?

A. Beg pardon?

Q. Is that the lease that is in controversy, at-

(Testimony of C. P. Morgan.)

tached to the complaint?

A. That is the lease.

The COURT.—Cross-examine.

Cross-examination by Mr. COBB.

Q. The “Teddy” never interfered with your landing?

A. The “Teddy” did interfere with our landing.

Q. What’s that?

A. Yes, interfered with our landing.

Q. In what way?

A. She stayed at the float so long, with the tide running under the float, that we missed our landing.

Q. When was that?

A. On one occasion, I can’t state the date.

Q. Just one occasion?

A. On one particular occasion.

Q. Any other occasion?

A. Not as close as that; as a rule, I stated, she got away several minutes before our arrival.

Q. Just on one occasion then, it interfered with your landing—how much?

A. So much that we missed our landing. [51]

Q. Missed on account of the low tide?

A. On account of the full tide, the run of the tide, on account of the current, a tide running under the float.

Q. Now, Mr. Morgan, did you ever land at the south float? A. Yes.

Q. You continued to use that float—

A. Why did we continue to use that float—

Q. Yes.

(Testimony of C. P. Morgan.)

A. The north float is the float that the "Rex" started at. We have accustomed our passengers to go to the north float to take the ferry.

Q. Well, how far apart are the gangways, between the two floats?

A. Distance probably forty feet.

Q. Is that the only reason?

A. No, that is not the only reason.

Q. Tell the Court what the real reason is?

A. I told the Court what the real reason was. There is another reason.

Q. What? A. It is further around.

Q. Great deal further around?

A. Yes, probably five minutes more.

Q. Take that much more time and more gasoline?

A. Yes.

Q. Isn't there still another reason—at low tide, very low tides you can't get in and out that south float? A. That is a fact.

Q. Yes. Was that part of the time during the day you could not make—

A. Did you say north or south?

Q. South.

A. We haven't any tide when you couldn't get into the south float; we know of no time you can't get into the south [52] float, if such a low tide occurs we haven't seen it.

Q. From how long was this "Reck" boat run?

A. This what?

Q. This "Reck," your predecessor, the ferry before you? A. The "Reck"?

(Testimony of C. P. Morgan.)

Q. The "Rex," or whatever you call it. How long did it run?

A. It commenced to run the latter part of June and run through July.

Q. And it landed at the north float?

A. Landed at the north float.

Q. Now, as a matter of fact the "Tillicum" goes to that float? A. She used to.

The COURT.—Who used to?

Mr. COBB.—"Tillicum," another boat.

A. Their calls were infrequent, she touched there.

Q. (By Mr. COBB.) Whenever she had business? A. She touched there infrequently.

Q. She was a gas-boat plying for hire in the waters here? A. Yes.

Q. Small gas-boat "St. Nicholas" used it?

A. She touched a few times this summer.

Q. She is a small gas-boat plying here on inside waters? A. Yes.

Q. Used it whenever she had occasion, business there?

Mr. IRVING.—I submit this is irrelevant, if your Honor please. We admit—

The COURT.—What time are you referring to?

Mr. COBB.—Up to the time of this lease.

Mr. IRVING.—Before or since?

The COURT.—He says before the lease was given. The object, of course, is to show the public need of the float?

Mr. IRVING.—Yes.

The COURT.—Up to that time. [53]

(Testimony of C. P. Morgan.)

Q. (By Mr. COBB.) They used it, didn't they?

A. At times, infrequently.

Q. The "Hague" also used it?

A. I don't think I have seen the "Hague" use it.

Q. You don't know about that?

A. I think I have never seen the "Hague" use it.

Q. What other boats have you seen there?

A. I think the boats that have touched there have been very infrequent.

Q. Did you see Mr. O'Connor's boat there?

A. Yes, I have seen Mr. O'Connor's boat there.

Q. Bartello's boat?

A. No, I don't remember Bartello's boat.

Q. As a matter of fact you can't recall all the boats you have seen there, can you?

A. I have seen very few boats there, hasn't been generally used.

Q. Can you recall all the boats you have seen there? A. No, I can't.

Q. Now, when did the "Teddy" begin taking on and discharging passengers there?

A. What date?

Q. Yes.

A. I am unable to state without looking at my records the date she started running.

Q. It was at least a month before you made that lease, wasn't it?

A. I don't believe it was a month, I cannot tell without looking.

Q. Some time—

A. It was some time before the lease was made.

(Testimony of C. P. Morgan.)

Q. And they gave the regular service on their run, channel ports here, to that float?

A. Might have been called regular, yes. [54]

Q. Before you leased it? How long have you resided in Juneau? A. Since last spring.

Q. You didn't reside here then during the past years, four or five years?

A. My first residence was last spring.

Q. Only since last spring. When was this occasion that you refer to that you were interfered with at this one landing on account of the current?

A. On account of the "Teddy." We missed the landing on account of the "Teddy."

Q. You say the "Teddy" lay there until the current was so strong you couldn't land?

A. The "Teddy" lay there until we come so close that we missed the landing. You understand there is a current flows under that float and a boat approach must carry speed in order to make the float.

Q. When was that? A. I can't state the date.

Q. About the first of the month? A. Yes.

Q. Before you leased it then?

A. Before it was leased.

Q. What did you do with your passengers that you had aboard on that occasion?

A. We made another landing.

Q. Why? Just explain to the Court what you mean by that. I don't understand. Did you take the passengers back to Juneau?

A. I say we made another landing at that float.

Q. How long did that take you?

(Testimony of C. P. Morgan.)

A. A few minutes.

Mr. COBB.—So you were just discommoded a few minutes on account of the current. That is all. [55]

Q. (By Mr. IRVING.) How long have you been a resident of Alaska, Mr. Morgan?

A. Since 1898.

Q. But of this particular part?

A. Since last spring.

Q. Mr. Cobb asked the reasons why you landed at the north float instead of at the south float. Now, I will ask you is it more convenient for a ferry starting from Juneau to land at the float operated by the Juneau Ferry and Navigation Company than it would be to land at the float that is now under lease to you from the city of Douglas?

Mr. COBB.—I object, irrelevant and immaterial.

Mr. IRVING.—He has laid great stress on the fact we have to run around the island. He has shown it would take five minutes longer, at greater expense. Now, I want to show by this testimony that their own float, which is in good repair, splendid position, is much nearer to the town of Juneau than the north float.

The COURT.—Well, he may answer that question.

A. The float of the Juneau Ferry and Navigation Company that they have been regularly using is probably three hundred yards nearer the town of Juneau, in order to make a landing at the other float, approximately, three minutes are consumed.

Q. That is, it would consume three minutes more

(Testimony of C. P. Morgan.)

time for the ferry to land at your float than at the Juneau Ferry and Navigation Company's float that they own? A. Approximately.

Q. Will you state to his Honor the location of these two floats as being a public convenience to the public generally of Douglas, if you know?

A. The approaches—

Q. That is, I mean, now, get me; the float of the Juneau Ferry & Navigation Company and the float under lease to you by [56] the town of Douglas?

A. The approach to the two floats—the approaches to the Juneau float and to the float now under lease to the Island Ferry Company reach up to the Main Street of the town and tap the town at its business center.

Q. Now, for the purpose of giving the Court the identical location, this float that is at the end of the Juneau dock, that leads up past whose store when you get up on to Main Street.

A. Elmer Smith's drugstore has been on the corner, store.

Q. Just to bring it home to His Honor. And then if they land at this north float that you have under lease, passengers, they come on up about what place?

A. Martin's, and the Ohpheum Theater, picture show.

Mr. IRVING.—Your Honor gets the location of the two floats?

The COURT.—Yes, I know.

Q. (By Mr. IRVING.) Very well. Is there at low tide—at all stages of the tide—you say you have

(Testimony of C. P. Morgan.)

grounded at this north float?

A. Very many times I have gone aground with the small boat "Rex," drew not to exceed two feet of water.

Q. And you have also stated that the float is grounded?

A. I have seen the float aground high and dry.

Q. Do you know the conditions of the water at the float of the Juneau Ferry and Navigation Company's float at low tide?

A. I have seen the "Alma" laying there at all stages of tide without trouble.

Q. Without trouble? A. Without trouble.

Q. Whether or not, if you know, could the "Alma" have landed at the north float at the same stage of water? A. She could not. [57]

Q. Whether or not the "Teddy" could have landed at the north float?

A. I have seen the time when the "Teddy" could not get her gangway to that float; we have been unable to get the gangway of the "Gent" there; we have been aground there very many times with the "Gent"; the bottom is sloping, it is not precipitous.

Mr. IRVING.—That is all, Mr. Morgan.

Q. (By Mr. COBB.) Paid the rent?

A. The rent was paid in advance.

Q. Paid the rent on the float?

A. It was, I have every receipt.

Q. (By Mr. IRVING.) Have you ever paid anything on this lease?

(Testimony of C. P. Morgan.)

A. First month's rent when it was due, have the receipt.

Mr. IRVING.—That is all.

Mr. COBB.—That is all.

[Testimony of B. D. Blakeslee, for Plaintiffs.]

B. D. BLAKESLEE, being first duly sworn, testifies on behalf of the plaintiffs, as follows:

Direct Examination by Mr. IRVING.

Q. Your name, please? A. B. D. Blakeslee.

Q. Where are you residing now? A. Juneau.

Q. Where? A. Juneau.

Q. Where are you working?

A. I am repairing the wharf over on the Island for the City of Douglas.

Q. Do you know the location of the float on the north side of the city dock? A. Yes, sir, I do.

Q. Will you kindly state to the Court—did you know of that float in the month of November?

A. Yes.

Q. The first of November?

A. Along about then, I think.

Q. What condition, what is the physical condition of that float in so far as its commercial value at this time [58] and first of November?

A. I don't think it amounted to much, inasmuch as the logs it is built on are water-logged and it is washed if there is any sea at all, making it impossible for people to get on. Yesterday particularly we noticed it was impossible for a person to get on and off.

(Testimony of B. D. Blakeslee.)

Q. What is the condition of the logs underneath as to rottenness?

A. I tested one to-day with the expectation of taking it out and found it quite rotten.

Q. Found it quite rotten. You have been in this class of business some time, have you, Mr. Blakeslee?

A. Yes, I have been in all classes of repair work.

Q. Then your opinion as acquainted with this class of work—would you say that float on the first of November when leased was in fit condition for general commercial use?

A. No, it only could be used to advantage during the calm times.

Mr. IRVING.—That is all.

Cross-examination by Mr. COBB.

Q. (By Mr. COBB.) From its situation, with storm blowing, it is difficult to get in—

A. If it was built up higher they would have better opportunity of getting in, but the way it is now it is right almost level with the water, not over about seven inches; I measured to-day.

Q. Only about seven inches?

A. Yes, at the low part.

Q. That is due to its being water-logged, the conditions you speak of, when water is washing over when a storm is [59] blowing?

A. Whenever there is a sea on it gets awash.

Mr. COBB.—That is all.

Q. (By Mr. IRVING.) Mr. Blakeslee, if this float were detached, this particular landing, that gang-

(Testimony of B. D. Blakeslee.)

way, if it were detached from the dock and standing outside by itself, a man needing a float and knowing the condition of this float, would you pay anything for it, provided you needed a float?

A. I don't think I would.

Q. Don't think you would. Now, as a man experienced in this line of work, would you say that, from the condition of this float as you find it now you are about to repair it, that there has been anything done to the float for a long period of time in the way of repairs?

A. No, I should say not, as the timbers are covered with slickers and barnacles, looks as if it had been that way for a long while.

Q. And do you know anything about the leasing of this float to the Island Ferry Company?

A. No, sir, I do not know. I heard it had been leased, but I don't—

Q. You don't know anything about it yourself?

A. No, sir.

Q. Did you receive the notification of the street committee of Douglas to repair this float since November first, before or after, since November first?

A. It was spoken of when I first went over there along the middle of October, but there has been nothing done about it up until after; started this morning.

Mr. IRVING.—This morning. That is all. [60]

Q. (By Mr. COBB.) The street committee?

A. Wharf committee, I have—

(Testimony of B. D. Blakeslee.)

Q. Wharf committee had it done. When, if you know? October?

A. Along in October, when I returned from the Mendenhall bridge contract.

Q. And directed it be put in order?

A. Yes, the wharf, the piling—

Q. The whole wharf? A. Yes.

Q. Or just this wharf?

A. The wharf generally required repairing.

Q. Oh, yes, it was a general job of repairs on the wharf and included—

A. It was understood.

Q. The city of Douglas.

A. Yes, sir, I am working entirely through the city of Douglas.

Mr. COBB.—That is all.

Mr. IRVING.—That is all.

[**Testimony of M. J. O'Connor, for Plaintiffs
(Recalled).]**

M. J. O'CONNOR (Recalled).

Direct Examination by Mr. IRVING.

Q. I don't remember as to whether, when you were on the stand, I asked you these questions; if I did the Court will pardon me. Do you know of your own knowledge as to whether or not the city of Douglas has expended any money in the upkeep of this float leased to the Island Ferry Company?

A. I do, sir.

Q. Tell about that?

A. There has been nothing spent on it, it is in the same condition to-day; of course, it is not quite as

(Testimony of M. J. O'Connor.)

good, but there has been nothing spent on it.

Q. Nothing spent on it; when you say spent on it that is keeping [61] it in repair?

A. Well, it wasn't used a great deal; when you use a dock or a float it requires much more repair than when it isn't used.

Q. There was no ferry landing at it then?

A. No, sir.

Q. If there was a ferry landing there it would have to be in a different condition to-day.

Q. Do you know the condition of it?

A. I do, sir.

Q. What is it? A. Very bad.

Mr. IRVING.—That is all.

Q. (By Mr. COBB.) One or two questions I want to ask Mr. O'Connor I omitted last night—to clear up the matter. Did I understand you to say yesterday that the ferry company, the Juneau Ferry and Navigation Company, tried to prevent you from building a dock?

A. Yes, sir, you understood me if you understood me correctly; that is they didn't go over with a shot-gun or rifle to stop me from building that dock, but Mr. Margrie with tears in his eyes spent an hour in my office trying to induce me—

Q. Is that what you referred to?

A. That is what I referred to.

Q. You didn't mean that they tried to use any improper means?

A. Never gave them occasion to offer me any improper means; I told Mr. Margrie before we had

(Testimony of M. J. O'Connor.)

spoken very long that no power, no corporation nor nothing, or no lot of individuals could prevent me from building that dock, and doing what I thought was best for the people of Douglas.

Q. I just wanted to clear it up; I thought they might have tried to bribe you?

A. Knew better than to offer a bribe to me, Mr. Cobb. [62]

Q. I wanted to clear it up.

A. I will clear it up for you any time; there is no man ever offered me a bribe, not even Mr. Margrie.

Q. Just simply asked you not to build it. Give any reasons why?

A. Mr. Margrie stated that I was, that if I did build the dock that I would waste the taxpayers' money; he pleaded with me to come over to Juneau and look over the books and he could show me where they hadn't made a cent on their ferry dock; I told him that since it wasn't a paying proposition for him he better go home and I would build a dock and take that white elephant off their hands. I did build the dock, Mr. Cobb, and it has saved the people of Douglas thousands of dollars in the reduction in the price of coal; it dropped the wharfage from two dollars to a dollar, and last year it netted the citizens of Douglas a little less than six thousand dollars.

Q. Well, that was good work.

A. I think it was good work, Mr. Cobb; I am proud of it.

Q. Now, then, the situation then prior to the time

(Testimony of M. J. O'Connor.)

that you built this dock, as I understand it, was the Juneau Ferry and Navigation Company had the only dock in the place?

A. Yes, sir, that was a fact.

Q. That was a privately owned dock?

A. Yes, sir.

Q. And had the only float in the place?

A. The only float? No, prior to the building of this city dock Mr. Murray built a dock and also built a float; he no sooner had it built—he built that for the public, intending to use it himself; no sooner had he built that dock than the Juneau Ferry and Navigation Company had it shut up and paid him to keep it shut up, to the detriment of the [63] public.

Q. It wasn't a public float, however?

A. Beg pardon?

Q. You are still getting away from the point I am asking about.

A. I might have; if you give me the point you want brought out I will certainly bring it out.

Q. It was the simple question,—was any other public float in the place? A. Not a public one.

Q. Yes. So that anybody who landed there, wanted to land at Douglas had to use a privately owned float and privately owned dock; that was the situation?

A. That was the situation, sir; they would permit of no other float.

Q. It was to meet that situation that the city of Douglas built its present public dock?

(Testimony of M. J. O'Connor.)

A. It was to break that monopoly that that city dock was built.

Q. Exactly. A. And benefit the people.

Q. And the floats put in also?

A. For the very purpose.

Q. And it accomplished that purpose?

A. It accomplished that purpose, yes, sir.

Mr. COBB.—That is all.

Q. (By Mr. IRVING.) Now, when you say it accomplished its purpose, what was the north side float built for?

A. It was for the purpose it is being used to-day.

Q. And to serve the public?

A. And to serve the public.

Q. What was the south side?

A. For the general public, for a landing place.

Mr. IRVING.—The north side, from your testimony yesterday and to-day, for the specific—

Mr. COBB.—I object to his leading the witness.

[64]

Q. (By Mr. IRVING.) State what these two floats were built for, giving the Court just the inside of that whole situation in your own language.

A. There was absolutely, Mr. Cobb, no use for the north side float when the south float was built, absolutely; when the south float was built you immediately abandoned your—refused to let the people to put on another and you turned Murray's float over to him; it was useless to Mr. Murray; and to still further the interests of the people of Douglas, I asked Mr. Murray to give me that float after your

(Testimony of M. J. O'Connor.)

company had abandoned it, and he gave it to me and I had that float set up there without a cost to the city of Douglas except setting it up, but there was absolutely no use for it except that it may be an inducement for an independent company to come in and provide a landing for them.

Q. Now, the south float? A. Beg your pardon?

Q. Tell the Court about the south float.

A. South float was for the general public and it was enlarged to accommodate all the people that could come in there.

Q. And that is what it was built for?

A. It was built for the general public. We first had a float on the north side, we found it wasn't—added about sixty feet, the float is about one hundred feet long.

Mr. IRVING.—That is all.

Q. (By Mr. COBB.) That is for small boats to land at? A. Anybody.

Q. I say, the small boats; it cannot be used except for small boats, small boats land and lay at—

A. I have seen all manners of boats in there. [65]

Q. You never saw the "City of Seattle" in there?

A. No, no, I haven't. I have seen—I have seen James' towboat in there.

Q. But you never saw any of the big steamers?

A. It wasn't built for the big steamers.

Q. Exactly. It was built for the small boats to land and lay at.

A. Built for anybody that wanted to use it; there has never been a man ordered to leave that float—

(Testimony of M. J. O'Connor.)

they have been invited to come there and stay there; there is a fishery boat laying over there all the fall.

Q. (By Mr. IRVING.) And the "Alma," can the "Alma" land there?

A. The "Alma" could land there.

Q. (By Mr. COBB.) I asked you yesterday and you didn't know; have you refreshed your memory—can you tell us when you built that dock?

A. I think it must have been in 1909; I could not say exactly without making—

Q. You didn't make six thousand dollars in that year?

A. Well, now, I can tell you a whole lot more about that dock if it is going to do you any good; that was an uphill job, building that dock; the city had very little money; I will tell you some things that you and the Court haven't found out about that dock. To begin with—

Q. Only want you to answer my question.

A. I know. You ask me about building that dock.

Q. I ask you if you made any such sum as six thousand dollars.

A. We didn't build the dock the first year, we built it—

Q. The first year after it was built?

A. It has made some money since the very day it was built. [66]

Q. But no such sum as you claim it made last year?

A. No, I don't think it made as much; I think it made four thousand dollars in 1913.

(Testimony of M. J. O'Connor.)

Q. 1913?

A. The records of the city clerk will show what it has made from the date it was built.

Q. Prior to 1912? A. Made money all the time.

Q. As much as four thousand dollars?

A. I could not be positive. I remember last year because I was quitting the council and I was proud of the record we made.

Q. Mr. O'Connor, you can give the Court some idea, if you will, as to the amount it made in 1910 and '11.

A. Probably a few thousand dollars, two or three, I can't say definitely.

Q. Don't you know it didn't make any such sum?

A. I tell you it didn't make any such sum; it has been increasing right along.

Q. Exactly. Can you tell approximately what the dock cost you?

A. No, I can't, probably; it has probably cost twenty thousand dollars up to this time, but it cost very little to begin with, Mr. Cobb; the logs that went into that first approach I was made a present of.

Q. Now, Mr. O'Connor—

A. And I donated them to the city.

Q. From whom did you get the wharf site?

Mr. IRVING.—I object, if your Honor please—who they got it from.

The COURT.—I don't see, Mr. Cobb, myself.

Mr. IRVING.—As far as the wharf site is concerned—

(Testimony of M. J. O'Connor.)

Mr. COBB.—The purpose of it I will state to the Court. This witness can testify as well as anybody else, to show [67] that under the terms they haven't a right to make a lease of any part.

Mr. IRVING.—If your Honor please, the record is the best showing.

The COURT.—Show what?

Mr. COBB.—Show under the terms on which they got it, have no right to—

The COURT.—That is part of your case anyhow. Ask another question.

Mr. COBB.—That is all, I think.

Mr. IRVING.—That is all.

That is all, if your Honor please.

Plaintiff rests.

[Testimony of Waldo B. States, for Defendant.]

WALDO B. STATES, being first duly sworn, testified on behalf of defendant, as follows:

Direct Examination by Mr. COBB.

Q. Captain, state your name?

A. Waldo B. States.

Q. Where do you reside, Captain States?

A. Juneau.

Q. What is *occupation*?

A. I am master of the Alma.

Q. Your occupation, then, you are mariner, master's papers? A. Yes, sir.

Q. How long have you been operating boats in and out the port of Juneau, and Douglas, Gastineau Channel? A. Oh, About twelve years.

(Testimony of Waldo B. States.)

Q. Are you familiar with the north float of the Douglas City dock? A. Yes, sir.

Q. How long have you known that float?

A. Ever since it was constructed I think.

Q. Do you know whether or not from the time it was constructed [68] until the present time it was used generally as a public landing place for small boats?

A. Yes, sir, I think it is; I have seen numerous boats tied up and laying there.

Q. Land there yourself? A. Yes, sir.

Q. How long have you been in the employ of the Juneau Ferry and Navigation Company?

A. Since the 17th day of November, 1908, continuously.

Q. Ever landed there with the ferry before this year?

A. Yes, landed there at the time, for a period of about a week while we were repairing our own float.

Q. Have you had occasion to land there at other times in the course of the business of the ferry?

A. Yes, I have, not very many times, have few times, but I have landed there.

Q. Now, Captain, I want to ask you, to get you to tell the Court in a general way so he will understand it, first, whether there has been any increase in the travel between the Douglas Island ports on the small boats, ferries and small boats here within the last two or three years, and, if so, what has been the extent of that increase, as near as you can—

(Testimony of Waldo B. States.)

Mr. IRVING.—I object, as irrelevant and immaterial.

The COURT.—Overruled.

Q. (By Mr. COBB.) Go ahead and answer.

A. There is no doubt but there has been increase in travel in the last two or three years, and especially this last year.

Q. Can you give some idea as to the volume, whether it is half as much more, twice or three times as much? A. It is more than double. [69]

A. (Continued.) A good deal more than double.

Q. So that it is in order to serve the public now you would have—what has been the increase in the ferry service?

A. Oh, the increase in the ferry service has been from eight trips to sixteen.

Q. And prior to three years ago?

A. Three years ago?

Q. Prior to that time did you make any trips at all to Thane?

A. O, no, well at the time the Nowells had Sheep Creek then.

Q. How is that?

A. At the time the Nowells had Sheep Creek there was two ferries a day, and after they closed down there was no ferry to Sheep Creek. But the last three or last—it has been very near three years we have operated a double crew on the ferry, and that is what the “Alma” was constructed for too.

Mr. IRVING.—I object to this testimony so far as Sheep Creek is concerned, I would like to see be-

(Testimony of Waldo B. States.)

tween Douglas and Juneau.

The COURT.—I think that is going too far.

Mr. COBB.—It is only to put into the record.

The COURT.—Well, it is in the record.

Mr. IRVING.—I move to strike that testimony.

The COURT.—It will stay right where it is.

Q. (By Mr. COBB.) Now, state as near as you can recall what boats you have seen landing at that north side float and using it as a public dock since it has been built; just give as accurate an idea as you can recall.

A. I have seen the “Hague” land there, I have seen the “Fox” land there, the “Tillicum” land there, I have seen the St. Nicholas” land there, I have seen the “Pioneer” land there, and numerous other boats that have come and went; of course the most of the people that come or go in or out of Douglas know that the *ferries going* and coming all the time and they have to watch [70] their chance if they use our float.

Q. Now, Captain, if the south float ferry is convenient for the public ferry boats as the north float touching at that dock?

A. At the City dock?

Mr. IRVING.—Object, if your Honor please.

The COURT.—Well on the theory of Mr. Cobb I believe it is competent—proceed.

Q. (By Mr. COBB.) Just state to the Court what is the difference then in the convenience of the ferry business in using the north float instead of the south float.

(Testimony of Waldo B. States.)

A. O, there is no comparison for the convenience of the two floats to run a ferry business with.

Q. Why?

A. Why, float is inside of the island and half of the time it is blocked with saw logs, would be impossible to run a ferry schedule in and out of and you would have to run around the island you would increase your route half a mile.

Q. Well, then, how is it with regard to the small boats using it to lay at, being crowded frequently with small boats?

A. O, yes, there is lots of small boats tie up and lay there right now.

Q. That, in other words, is the small boat harbor, isn't it? A. Yes, sir.

Mr. COBB.—That is all.

Cross-examination by Mr. IRVING.

Q. Mr. States, when you were sailing the "Alma" did you land at this north float? A. I have.

Q. Did you maintain a regular ferry schedule for that float? A. Yes, sir.

Q. Was it advertised that you would leave the north float of [71] the city dock on the schedule?

A. At the time I landed at the city dock we were repairing our own.

Q. That is it exactly. You never run from the city dock on a schedule?

A. Well, only at that time.

Q. What I mean, Waldo, was generally?

A. No.

Q. The Juneau Ferry and Navigation Company

(Testimony of Waldo B. States.)

used their own float? A. Yes, sir.

Q. And that was a good float? A. Yes.

Q. Good approach, lead right up, the Juneau Ferry and Navigation Company float led right up to Front Street? A. Yes, sir.

Q. And now isn't it a fact, Mr. States, that up to the time that the "Rex" and the "Gent" went on the route, you never did, as a general thing, land at that float at all with any one of your boats?

A. I didn't make a practice of landing.

Q. You didn't advertise to the public?

A. Only at the time we repaired.

Q. Now we grant that, that is granted—when your own float was under repair you landed—

A. That is the only time.

Q. Now, outside of that exception, you never informed the public or advertised, the Juneau Ferry and Navigation Company never advertised it would leave that float on schedule? A. No, sir.

Q. It seems to me that you started an independent ferry yourself, once Mr. States? A. No, sir.

Q. Didn't you contemplate or put a boat on one time between here and Douglas? A. No, sir.

Mr. COBB.—I don't think that is proper cross-examination.

The COURT.—No, it isn't, but he says No, so we can't [72] proceed any further.

Mr. IRVING.—It was just a fault of my memory, I thought Waldo did.

Q. Did you ever land, Waldo, as a general thing did you ever land at the north float, the "Alma"

(Testimony of Waldo B. States.)

since you been sailing, as a general thing?

A. No, not as a general thing.

Q. Did you tell the Court when and how and why you landed at this north float?

A. At the time we repaired, a little over a year ago or sixteen months ago we moved our float out and—

Q. I mean outside of the time of the repairs, Waldo, any time did you land there generally, outside of the times when you were making repairs?

A. No, sir.

Q. No. All right. Now, can you land at the north float, of this boat that is under lease to the Island Ferry Company, could you land there at low tide with the “Alma”?

A. I don’t think I could.

Q. Have you ever grounded there? A. No, sir.

Q. Then you never did land at real low tide?

A. No, I don’t know it was low tide particularly or not, I never noticed, I never was in at extreme low tide.

Q. Now, being an experienced navigator, running between Douglas and Juneau for twelve years, you know of your own knowledge whether you can land with the “Alma” at low tide at that float?

A. I don’t think I could not. No, sir, but then you may be able to land at the float one year and not be able the next.

Q. Why?

A. It is continually filling in.

Q. That is the Treadwell filling in on that beach?

(Testimony of Waldo B. States.)

A. More or less all along there, yes, sir; I don't know whether it is to the Treadwell sand or not, but we had to move our own float out at Douglas on account of the debris coming down.

Q. You state it is more convenient to land at the float on the north side of the city dock than it would be to land at the float on the south side?

A. I considered it, to running a better schedule.

Q. Now, we will take that ferry schedule,—I will ask you isn't it more convenient to run a ferry schedule coming and departing from the Juneau Ferry and Navigation Company float at Douglas between Juneau and Douglas than it would be at the north float of this dock?

A. I would consider it so.

Q. Yes, the time is shorter, isn't it?

A. Yes, sir.

Q. And the equipment and the float itself is better? A. I think it is, yes, sir.

Q. That is the Juneau Ferry and Navigation Company's float at Douglas is well kept up, and the piles, and the logs underneath are good: is that right? A. Yes, sir.

Q. Now, is the Juneau Ferry float, that is the deck of the float, is it higher above water than the deck of the float of the Island Ferry Company—

A. It has two feet more free-board, easily.

Q. Which float has the two feet more free board?

A. The Juneau Ferry and Navigation Company's.

Q. That is the one the Juneau Ferry and Navigation Company own and control? A. Yes, sir.

(Testimony of Waldo B. States.)

Q. Now Waldo, what is the physical condition as you find it, as you know it, as you found it on the date of November first [74] on to now: what has been the condition?

A. I think it is water-logged and sunken down, and the planks are loose on it and in a run-down condition.

Q. Listen. Did it appear to you it had been receiving municipal attention so far as keeping it in repair is concerned?

A. It didn't look it. I put some cleets in it to tie up to at the time I landed there.

Q. Now, just one more question. Did the Juneau Ferry and Navigation Company at any time prior to the time of the entering into the business of ferrying by the Island Ferry Company make any effort or did they ever maintain a regular schedule of ferry service between the north float of the city dock and the city of Juneau? A. No, sir.

Mr. IRVING.—That is all.

Mr. COBB.—That is all.

[Testimony of Fred Pantermahl, for Defendant.]

FRED PANTERMAHL, being first duly sworn, testified on behalf of the defendant, as follows:

Direct Examination by Mr. COBB.

Mr. IRVING.—May I ask Mr. States one more question right from where you sit.

Q. When did the cut in the fare go into effect, so far as the Juneau Ferry and Navigation Company is concerned, to fifteen cents?

(Testimony of Fred Pantermahl.)

A. (By Mr. States.) I can't tell you offhand. It was in the neighborhood of three months—

Q. Was it before or after the independent ferry company went into business?

A. Why it was after.

Mr. IRVING.—That is all. [75]

Mr. FRED PANTERMAHL.

Q. (By Mr. COBB.) What is your name?

A. Fred Pantermahl.

Q. Where do you live? A. Juneau.

Q. How long have you lived there?

A. Last six years.

Q. What is your occupation?

A. Why, I work on ferry-boat.

Q. How long have you worked on it?

A. Since 1910, May, 1910.

Q. What boat are you on now? A. "Teddy."

Q. How long have you been working on the "Teddy"?

A. Running her for the last two months.

Q. How's that?

A. Running her for the last two months.

Q. Running her for the last two months. As a ferry? A. As a ferry.

Q. Beginning two months ago what was the run you made?

A. Why we run from Juneau to Douglas.

Q. Landing where?

A. Landing, from Juneau and back to Juneau.

Q. At what dock?

(Testimony of Fred Pantermahl.)

A. Why we landed on the ferry dock and city dock.

Q. Give service at both docks?

A. Give service at both docks, yes, sir.

Q. Got passengers from both docks?

A. Got passengers from both docks.

Q. Landed at both docks?

A. Landed at both docks.

Q. Then returned to Juneau?

Mr. IRVING.—I object to the leading form of the questions.

The COURT.—Yes, change the form.

Q. (By Mr. COBB.) That began about two months ago?

A. About two months ago, the third of October.

Q. How long have you known that dock? [76]

A. Why, ever since I been here, six years.

Q. Now during that time did you know of its being used generally by the small boat public?

A. Yes sir, all small boats in the Channel.

Q. I want you to give the Court a general idea what boats you have seen use it.

A. Why, all kinds of boats, I saw the "Tillicum," and the "Sea Gull"—Aleck Hartowns, I see him laying on the float and loading freight for Tenakee; I see the "Ida," small boat running around the channel; I see the "St. Nicholas" loading freight and passengers, and several others.

Q. Now, on this ferry run that you speak of, some of your passengers found it more convenient to land at the city dock?

(Testimony of Fred Pantermahl.)

Mr. IRVING.—I object to the leading form of the questions, if your Honor please.

Mr. COBB.—I apologize to the Court—simply shows force of a bad example; the gentleman led his witnesses all the way through.

The COURT.—Bad example ought to be avoided, not followed.

Mr. COBB.—I will try and avoid it.

Q. You state that some of your passengers land at this one float and then the other? A. Yes, sir.

Q. How is it with reference to those desiring to use the ferry—

A. Lots of people rather take that float because it is nearer to their homes, especially the Indians,—live down that way, don't want to go through town, rather go down to that float and catch the ferry there, else they have to go through town, it is nearer, convenient for them, that is why we put them off and take them on there.

Q. Now, I want you to state in a general way so the [77] Court will understand it, what has been the increase in the ferry business for the last two or three years over what it was before?

A. Why, it has *been* more than doubled itself I suppose.

Q. When has been the greatest increase?

A. The last two years.

Mr. IRVING.—What is that?

A. Last two years, two or three years.

Q. What? The increase of the ferry service?

Q. (By Mr. COBB.) That increase going on still

(Testimony of Fred Pantermahl.)

all the time apparently?

A. Yes, sir, of course there is more at summer time than in the winter.

Q. But the general business is growing all the time?

A. Growing all the time, yes, sir.

Mr. COBB.—And you say it has more than doubled in the last year.

That is all.

Cross-examination by Mr. IRVING.

Q. How long have you been in the ferry business?

A. Since May, 1910, sir. About five years.

Q. In the employ of the ferry company?

A. In the employ of the ferry company. Yes, sir.

Q. And you say during that time that the ferry business has been on the increase?

A. No, not at that time, only the last three years.

Q. During the last three years?

A. Yes, sir, I have been on a boat when we carried across three people, made seventy-five cents the whole day, and there is lots of time— [78]

Q. Who owned that boat?

A. On the “Lone Fisherman”—the Juneau Ferry Company.

Q. You were working for them, were you, then?

A. Yes, sir.

Q. Hasn't the business increased since the independent ferry went in and the decrease in ferry—

A. I don't think—

Q. Hasn't it decreased? A. No, sir.

Q. You mean to tell the Court that you are carry-

(Testimony of Fred Pantermahl.)

ing as many passengers?

A. We didn't run the "Teddy" at the time.

Q. Didn't run the "Teddy." Now, why did you start the "Teddy," if you know?

A. Two months ago.

Q. What for?

A. Why to take the increase.

Q. To buck the Island Ferry Company?

A. No, sir, to be more convenient for people to get off and on on their wharf.

Q. On and off another wharf? A. Yes, sir.

Q. More particularly for the Indians?

A. Yes, sir, and for other people, too.

Q. Wait a minute, now. You say it was more convenient for the Indians? A. Yes, sir.

Q. Haven't those Indians always lived there—

A. Yes, sir.

Q. —that you know; then why was it if it was more convenient that the Juneau Ferry and Navigation Company didn't run their boats to this float prior to the time of the Island Ferry Company, for the accommodation of the Indians that live down on the beach—why is that?

A. Because they had their own float and the ferry company dock, and another thing, they couldn't land very well with [79] the other boat.

Q. Big boat, and at that time they didn't run the "Teddy"? A. Sometimes we did.

Q. You know now, as a general thing they didn't run the "Teddy"? A. No.

Q. When the "Gent" and "Rex" starting to run

(Testimony of Fred Pantermahl.)

they put the "Teddy" on? A. Two months ago.

Q. Did you up to prior to two months ago make a landing at this north float, as a general thing, and were you scheduled?

A. No, not as a general thing.

Q. Specific times you have gone? A. Yes, sir.

Q. Did you ever refuse to land passengers at this float, stating that the float of the Juneau Ferry and Navigation Company was the float you were to land at?

A. When the float was under repairs we used to land on the city float.

Q. Now, wait a minute—that isn't—

Mr. COBB.—Don't understand the question.

Q. (By Mr. IRVING.)—Did you at any time refuse to land anybody at the city float and state you were to land them at the float of the Juneau Ferry and Navigation Company float, that was the float you were supposed to land at under your orders?

A. No, sir, we never refused, but nobody every asked for it because our ferry float was right there.

Q. Now, at the times when your float was not under repair why did you land people at the city float on the north side?

A. Because I suppose the company thought it was right for them to land there.

Q. Because you were under orders to you to land there? [80]

A. I was under orders, I was running the boat.

Q. But up to the time the Island Ferry Company started you were not under orders, isn't that so?

(Testimony of Fred Pantermahl.)

A. Yes, sir.

Q. What is the physical condition of the float on the north side of the city dock as regards repair and being kept up, as against the condition of the float owned in fee and operated by the Juneau Ferry and Navigation Company: which is the better float?

A. The Juneau Ferry and Navigation Company has better float.

Q. Which is the larger? A. Why the Juneau.

Q. How much free-board has the Juneau got?

A. About a foot and a half, two feet.

Q. How much at north end dock?

A. Eight inches.

Q. You mean to tell me that the Island float has got eight inches or free-board?

A. About eight inches or ten inches, something like that, I didn't measure that.

Q. Isn't it a fact that some of it hasn't any free-board at all?

A. If it is blowing at certain stages the water washes over it.

Q. Listen. At a dead absolute calm isn't it a fact that some it hasn't any free-board at all?

A. That side towards the city, and no boats, no ferry land there.

Q. Now listen, I ask you an absolute simple question: isn't it a fact at a dead calm that there is some of the float at the north side of the city dock-free-board? A. I answered that question.

Q. What did you say?

A. The upper part, won't wash over when calm,

(Testimony of Fred Pantermahl.)

but at the end of the float towards the city it is right even with— [81]

Q. Right even with the water? A. Yes, sir.

Q. Now is the outer end, leading towards the *man* city dock? A. The outer end.

Q. Yes? A. That is the end.

Q. That is the end you mean; I thought you meant towards the town. Now, in rough weather it is impossible to land at that float at all, in northerly gale?

A. I landed there, sir.

Q. But the float was washed, wasn't it?

A. People could get off, could get off and get on.

Q. Did you consider it safe?

A. Why, I think so, sometimes.

Q. As a man running these boats do you think it is safe to land passengers?

A. Not in a real extreme bad weather it isn't safe.

Q. The slogan of the Juneau Ferry and Navigation Company is "Safety first"? A. Yes, sir.

Q. And still you landed these passengers at this float when you knew it wasn't safe?

A. We didn't land when it wasn't safe.

Q. When it wasn't safe? A. No, sir.

Q. That was up to your judgment, wasn't it?

A. No, sir.

Q. Have you ever landed passengers when they got their feet wet?

A. We never landed there when they got their feet wet.

Q. Never landed there when they got their feet wet? Then the float wasn't washed?

(Testimony of Fred Pantermahl.)

A. I told you the end towards the—is washed but the other is about eight or ten inches above water.

Q. Have you ever seen it when it was all washed?

A. I have saw it. [82]

Q. Have you ever landed there on those occasions?

A. No, sir.

Q. Did you then run around to the south side and land them?

A. We did, so did the Island Company.

Q. I will admit that we did go to the south float, but I am talking—did you run around to the south float and land them, on the “Teddy”?

A. Yes, sir.

Q. Could you have landed on your own float?

A. Why, sometimes.

Q. Why didn’t you land them there ragher than to go around there—or the “Teddy” is too small?

A. Liable to break up.

Q. Then it is more convenient to land at the float on the south side than it is on your own after you go as far as this north float next to the city dock?

A. Certain winds, strong winds, it would be. We landed that way.

Q. Were you operating as an agent of the Juneau Ferry and Navigation Company prior to the time of the “Gent” going into business? A. Yes, sir.

Q. What was the fare between Douglas and Juneau? A. Twenty-five cents.

Q. Do you remember when that fare was lowered?

A. Yes, sir.

Q. When was that, about?

(Testimony of Fred Pantermahl.)

Q. When the "Rex" started in to run.

Q. Who lowered the *far*, the "Rex" or the Juneau Ferry and Navigation Company?

A. The "Rex" I suppose.

Q. The "Rex" did? A. Yes.

Q. You know that to be a fact, don't you?

A. Yes, sir.

Q. Oh, pardon me, here is just one more; was there any notice [83] ever served on you by the city of Douglas, by its marshal, for you to stop landing at that float? A. Yes, sir.

Q. Signed by Mr. Shafer?

A. Signed by Mr. Shafer.

Q. Do you remember about the time when that was?

A. About the first of November, somewhere around there I guess.

Mr. IRVING.—That is all.

Mr. COBB.—That is all.

Defendant rests.

Mr. IRVING.—I don't see any reason for rebutting. [84]

[Order Allowing Bill of Exceptions, etc.]

And the above and foregoing oral testimony, together with the verified complaint of the plaintiffs and the answer to the rule to show cause, was all the testimony and evidence before the Court on the hearing and trial of said motion.

And because the above and foregoing matters do not appear of record, I, Robert W. Jennings, the Judge before whom said motion was heard, do hereby

certify and allow the above and foregoing bill of exceptions and order the same made a part of the record herein.

Done in open court this 21st day of December 1915.

ROBERT W. JENNINGS,

Judge.

Filed in the District Court, District of Alaska,
First Division. Dec. 21, 1915. J. W. Bell, Clerk.
By L. E. Spray, Deputy. [85]

*In the District Court for the Territory of Alaska,
Division Number One, at Juneau*

No. 1392-A.

C. P. MORGAN, R. B. COCHRAN and H. JOHAN-
SON, Copartners, Doing Business Under the
Name and Style of the ISLAND FERRY
COMPANY,

Plaintiffs,

vs.

JUNEAU FERRY & NAVIGATION COMPANY,
a Corporation,

Defendants.

Assignment of Errors.

Now comes the Juneau Ferry & Navigation Company, a corporation, appellant, and assigns the following errors committed by the Court on the trial and the rendition of the order granting a temporary injunction against the appellant in the above-entitled and numbered cause, upon which it will rely in the Appellate Court:

I.

The Court erred in granting the temporary injunction prayed for for the reason that the evidence conclusively showed that the float or dock mentioned in the complaint and restraining order was a public dock, acquired by the city of Douglas for public purposes, that the same had been used for public purposes for several years past and that the Common Council of the city of Douglas was without power to grant and convey an exclusive lease thereof to the plaintiffs.

II.

The evidence conclusively showed that the plaintiffs and appellees had no lease to the float and dock mentioned in the complaint and were not entitled [86] to the exclusive use thereof.

And for said errors the appellant prays that the said order granting the said temporary injunction be reversed and he cause remanded for such other and further proceedings as the said Appellate Court may deem proper.

J. H. COBB,

Attorney for Juneau Ferry & Navigation Company,
Appellant.

Filed in the District, District of Alaska, First Division, Dec. 17, 1915. J. W. Bell, Clerk. By L. E. Spray, Deputy. [87]

*In the District Court for the Territory of Alaska,
Division Number One, at Juneau.*

No. 1392-A.

C. P. MORGAN, R. B. COCHRAN and H. JOHAN-
SON, Copartners, Doing Business Under the
Name and Style of the ISLAND FERRY
COMPANY,

Plaintiffs,

vs.

JUNEAU FERRY & NAVIGATION COMPANY,
a Corporation,

Defendants.

Petition for Allowance of Appeal.

The Juneau Ferry & Navigation Company deeming itself aggrieved by the order of the Court granting an injunction pending the trial of this suit, made on the 14th day of December, 1915, hereby petitions the Court for the allowance of an appeal from said order to the Honorable the United States Circuit Court of Appeals for the Ninth Circuit.

J. H. COBB,

Attorney for Defendant.

Filed in the District Court, District of Alaska,
First Division, Dec. 18, 1915. J. W. Bell, Clerk.
By —————, Deputy. [88]

*In the District Court for the Territory of Alaska,
Division Number One, at Juneau.*

No. 1392-A.

C. P. MORGAN, R. B. COCHRAN and H. JOHAN-
SON, Copartners, Doing Business Under the
Name and Style of the ISLAND FERRY
COMPANY,

Plaintiffs,

vs.

JUNEAU FERRY & NAVIGATION COMPANY,
a Corporation,

Defendants.

Order Allowing Appeal.

Upon the petition of the Juneau Ferry & Naviga-
tion Company,

IT IS ORDERED that an appeal from the order
or the Court granting a temporary injunction herein,
made on the 14th day of December, 1915, be and the
same is hereby allowed, to the Honorable the United
States Circuit Court of Appeals for the Ninth Cir-
cuit.

Dated this 18th day of December, 1915.

ROBERT W. JENNINGS,

Judge.

Filed in the District Court, District of Alaska,
First Division, Dec. 18, 1915. J. W. Bell, Clerk.
By —————, Deputy. [89]

*In the District Court for the Territory of Alaska,
Division Number One, at Juneau.*

No. 1392-A.

C. P. MORGAN, R. B. COCHRAN and H. JOHAN-
SON, Copartners, Doing Business Under the
Name and Style of the ISLAND FERRY
COMPANY,

Plaintiffs,

vs.

JUNEAU FERRY & NAVIGATION COMPANY,
a Corporation,

Defendants.

Citation on Appeal.

United States of America,—ss.

The President of the United States to C. P. Morgan,
R. B. Cochran and H. Johansen, copartners, do-
ing business under the name and style of the
Island Ferry Company, and to Messrs. Irving
and Milwee, their attorneys, Greeting:

You are hereby cited and admonished to be and
appear in the United States Circuit Court of Appeals
for the Ninth Circuit to be holden in the city of San
Francisco, State of California, within thirty days
from the date of this writ, pursuant to an appeal
filed in the clerk's office of the District Court for
Alaska, Division Number One, in a case wherein the
Juneau Ferry & Navigation Company is appellant
and you are appellees, then and there to show cause,
if any there be, why the order in said appeal men-
tioned should not be corrected and speedy justice

done to the parties in that behalf.

WITNESS the Honorable DOUGLAS WHITE,
Chief Justice of the United States this the 18th day
of December, 1915.

ROBERT W. JENNINGS,
Judge.

Attest: J. W. BELL,

Clerk. [90]

Service of the above and foregoing Citation ad-
mitted this the 18 day of December, 1915.

GEORGE IRVING,
Attorney for Appellees.

Filed in the District Court, District of Alaska,
First Division, Dec. 18, 1915. J. W. Bell, Clerk.
By ———, Deputy. [91]

*In the District Court for the Territory of Alaska,
Division Number One, at Juneau.*

No. 1392-A.

O. P. MORGAN et al.,

Plaintiffs,

vs.

JUNEAU FERRY & NAVIGATION COMPANY,
a Corporation,

Defendant.

Praeipie for Transcript of Record.

The clerk will please make up a transcript of the
record in the above-entitled and numbered cause and
include therein the following papers, to wit:

102 *Juneau Ferry and Navigation Company*

1. Complaint.
2. Rule to Show Cause.
3. Answer to Rule to Show Cause.
4. Order Granting Temporary Injunction.
5. Bill of Exceptions.
6. Assignments of Error.
7. Petition for Appeal.
8. Order Allowing Appeal.
9. Citation.
10. This Praecipe.

This transcript to be made up in accordance with the rules for the United States Circuit Court of Appeals for the Ninth Circuit and the rules of this Court.

J. H. COBB,

Attorney for Juneau Ferry & Navigation Company.

Filed in the District Court, District of Alaska,
First Division, Dec. 22, 1915. J. W. Bell, Clerk.
By L. E. Spray, Deputy. [92]

[**Certificate of Clerk U. S. District Court to
Transcript of Record.**]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

Case No. 1392-A.

C. P. MORGAN and R. B. COCHRAN and H.
JOHANSEN, Copartners, Doing Business
Under the Name and Style of the ISLAND
FERRY COMPANY,

Plaintiffs,

vs.

JUNEAU FERRY and NAVIGATION COM-
PANY, a Corporation,

Defendant.

United States of America,
Territory of Alaska,—ss.

I, J. W. Bell, Clerk of the District Court for the District of Alaska, Division Number One, hereby certify that the foregoing and hereto annexed 92 pages of typewritten matter, numbered from 1 to 92 both inclusive, constitute a full, true and correct copy of the record, and the whole thereof, as per the praecipe of the plaintiff in error, on file herein and made a part hereof, in the cause wherein the Juneau Ferry and Navigation Company, a corporation, is plaintiff in error, and C. P. Morgan and R. B. Cochran and H. Johansen, copartners, doing business under the name and style of the Island Ferry Company, are defendants in error, No. 1392-A, as the same appears of record and on file in my office, and that the said

record is by virtue of the Appeal and Citation issued in this cause and the return thereof in accordance therewith.

I do further certify that this transcript was prepared by me in my office, and the cost of preparation, examination, and certificate, amounting to \$39.75 has been paid to me by counsel for plaintiff in error.

In Witness Whereof I have hereunto set my hand and the seal of the above-entitled court this 23d day of December, 1915.

[Seal]

J. W. BELL,

Clerk of the District Court for the District of Alaska,
First Division.

[Endosed]: No. 2732. United States Circuit Court of Appeals for the Ninth Circuit. Juneau Ferry and Navigation Company, a Corporation, Appellant, vs. C. P. Morgan, R. B. Cochran and H. Johansen, Copartners Doing Business Under the Name and Style of the Island Ferry Company, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the District of Alaska, Division No. 1.

Filed January 7, 1916.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.